90-1282 (2)

Supreme Court, U.S.
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No. _____

Supreme Court of the United States

October 1990 Term

REHAB AMER and AHMED AMER,

Petitioners

v.

DEPARTMENT OF SOCIAL SERVICES,

Respondent

Appendix to Petition for Writ of Certiorari to the Court of Appeals of the State of Michigan

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

In the Matter of MOHAMMED ALI AMER, SUHIER AHMED AMER and ZINABE AHMED AMER, Minors.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v No. 114910

REHAB AMER and AHMED AMER,

Respondents-Appellants.

Before: Gribbs, P.J., and Cavanagh and R.B. Burns,* JJ.

PER CURIAM.

Respondents appeal as of right the order of the probate court terminating their parental rights to their three children, Mohammed Ali (date of birth December 11, 1982), Suehier Ahmed (date of birth November 18, 1983) and Zinabe Ahmed (date of birth

December 9, 1986). This order was based on the probate court's finding by clear and convincing evidence that a statutory basis for termination had been established, MCL 712A.19a(e) and (f); MSA 27.3178(598.19a)(e) and (f), and that termination was in the best interest of the children. See MCR 5.974. We affirm.

In this appeal, the parents argue that the probate courts decision did not include specific findings of fact, failed to articulate the requisite statutory basis for termination, and was not supported by clear and convincing evidence. We disagree.

According to the record and the probate court's factual findings, this dispute started in 1984 when the Department of Social Services filed a petition with the probate court alleging abuse of Samier Amer, Suehier Ahmed's four-month old twin brother. Samier had human bite marks on both heels, neck and left side of the stomach, and also had fractures to the right humerus, the left

clavicle, the left upper tibia, and the distal and middle left femur. The five fractures were all in different stages of healing. Samier was also diagnosed as failing to thrive. The petition alleged that the respondents were unable to explain Samier's injuries. Doctors did rule out any metabolic disturbances, disease or deficiency as the cause of the fractures.

On March 27, 1984, an order for temporary custody of Samier was entered by the probate court. Samier was subsequently made a temporary ward of the court after the court determined that it had jurisdiction and that the allegations made in the petition had been substantiated. At this time, a treatment plan was designed for the parents.

The parents were subsequently given a psychiatric evaluation and, at a statutory review hearing, a return of Samier to the parents' care was not recommended. The examining doctor concluded that because the parents could not admit responsibility for

Samier's condition or show concern, there could be no change in their behavior and Samier would remain at risk.

At a statutory review hearing held on October 18, 1985, the same examining doctor changed his position and recommended that Samier be returned to the parents' home with continued monitoring. The change in position was based on the doctor's assumption that the parents had accepted responsibility for their conduct even though they had never openly admitted that they had abused Samier. The probate court ordered extended visitation in the family home. One month later, on November 22, 1985, Samier was dead.

The department of Social Services immediately filed a petition requesting the probate court to assume jurisdiction over the respondents' surviving children, Mohammed and Suehier, because of Samier's death while in his parents' care. At the hearing held on October 28, 1986, the probate court found that one of the respondents was responsible for the

nonaccidental death of Samier while the other parent failed to protect the child. The court also found that the parents' decision to seek medical treatment for Mohammed three months after he started to experience chronic diarrhea was not what a rational person would do when taking care of somebody's medical needs. On October 31, 1986, the probate court entered an order making the children temporary wards of the court.

As to the circumstances surrounding Samier's death, the autopsy revealed that there was a fracture to the back of the skull and that death was caused by head injuries. The fracture was the result of a blunt force injury to the head. There was a single impact and the pattern and extent of the injuries indicated that Samier's head had been moving at a great velocity when it struck a fixed object. In the pathologist's opinion, a slip and fall in the bathtub - the explanation offered by the parents - could not have caused the injuries. The pathologist thought that

Samier would have had to have been swung to generate the velocity needed to cause this type of injury because the contusion to the brain was on the opposite side of the impact. This witness' testimony was corroborated by the testimony of the director of pediatric intensive care from Children's Hospital.

As to the parents' explanation of Samier's death, the court compared the testimony of the emergency room doctor, the nurse, the police, and the EMS members with the mother's story and found numerous inconsistencies. The judge was convinced that the mother "orchestrate[d] what would sound best to the Court, as opposed to what really happened." The court went on to find that one of the parents had caused the death of the child while the other failed to provide protection.

At the hearing held on December 15, 1986, the court decided that the children were to remain in foster care and that family therapy was to continue with the return of the

children the ultimate objective. All three children were now involved because of the birth of Zinabe Ahmed on December ninth.

In subsequent proceedings, medical personnel who evaluated the parents testified to their belief that therapy that failed to deal with Samier's death would not prove helpful in rehabilitating the family. The parents would not admit to the abuse and it was felt that they had to address this issue before the other children could be safely returned to the family home.

On December 16, 1987, the Department of Social Services filed a petition requesting the permanent termination of the respondents' rights to their children in part because they had refused to accept responsibility for the nonaccidental death of Samier. During the dispositional hearing, the medical personnel repeated their belief that the respondents needed to acknowledge the child abuse before there could be a meaningful change in their parenting behavior. The medical experts were

convinced that a repeat of what occurred to Samier was possible. Furthermore, the parents' inability to deal with the abuse after years of therapy indicated that the family was untreatable. Denial had become fixed. Nothing more could be done for the family and a permanent solution was in the best interests of the family and a permanent solution was in the best interests of the children. The probate court found this testimony persuasive and on January 9, 1989, entered its order terminating the parental rights of Rehab and Ahmed Amer.

In termination cases, this Court reviews the probate court's findings under the clearly erroneous standard. In re Cornet, 422 Mich 274, 275; 373 NW2d 535 (1985). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. In re Miller, 433 Mich 331, 337; 445 NW2d 161 (1989). A decision to terminate is proper if there is

clear and convincing evidence of present neglect or a serious threat of neglect in the future. In re Parshall, 159 Mich App 683, 689; 406 NW2d 913 (1987), lv den 428 Mich 909 (1987). Because all the hearings constitute one continuous proceeding, evidence admitted at one hearing is considered evidence in all subsequent hearings. In re LaFlure, 48 Mich App 377, 387; 210 NW2d 482 (1973), lv den 390 Mich 814 (1973). And how a parent treats one child is probative of how that parent might treat other children. Parshall, supra.

By statute,

> Where a child remains in foster care in the temporary custody of the court following the initial hearing provided by section 19 [MCL 712A.19; MSA 27.3178(598.19)], the court may make a final determination and order placing the child in the permanent custody of the court, if it finds

any of the following:

***

(e) The parent or guardian in unable to provide a fit home for the child by reason of neglect.

(f) The child has been in foster care in the temporary custody of the court on the basis of a neglect petition for a period of at least 2 years and upon rehearing the parents fail to establish a reasonable probability that they will be able to reestablish a proper home for the child within the following 12 months. [MCL 712A.19a(e) and (f); MSA 27.3178(598.19a)(e) and (f).]

After a careful review of the record, we are of the opinion that the probate

court did make specific findings of fact, that these factual findings established the statutory basis for permanently terminating the custody rights of the parents, and that the evidence in support of these decisions was clear and convincing. The court entered detailed findings of fact and conclusions of law. The parents' failure to address their problems while in therapy and their treatment of Samier demonstrated their inability to provide a fit home by reason of neglect and their inability to reestablish a proper home. MCL 712A.19a(e) and (f); MSA 27.3178(598.19a)(e) and (f).

Respondents rely on In re Bedwell, 160 Mich App 168, 176-177; 408 NW2d 65 (1987), to argue that termination based solely on their failure to follow the treatment plan by admitting their guilt is not proper. To begin with, the probate court did not terminate respondents' rights solely because they failed to comply with the treatment plan. The physical abuse and death of Samier was clear

and convincing evidence of neglect sufficient enough to terminate the parents' custody rights in the absence of any proof that this behavior would not occur again. The probate court found the parents unfit and likely to remain that way after three-and-a half years of treatment. there was clear and convincing evidence to support this finding.

The respondents also make a number of arguments in an attempt to persuade this Court that their rights to equal protection and due process were violated. Apparently, the respondents' right to equal protection were infringed upon because the standard of proof used in this case is not as strict as the one used when an American Indian family is subjected to the same proceeding. We do not find this argument persuasive. Respondents' equal protection argument has been made before and rejected by a panel of this Court. See In re Miller, 182 Mich App 70, 75; ___ NW2d ___ (1990). We agree with that decision.

The respondents' rights to due

process were allegedly violated because (1) there was an impermissible shift of the burden of proof, (2) the requirement of an admission of guilt violated respondents' right to remain silent, (3) the DSS did not comply with the federal policy of family reunification, (4) the DSS manual was not followed and finally because (5) the probate court exhibited a bias and prejudice against the respondents.

As to the impermissible shift of the burden of proof, the respondents can be required to come forward with evidence that the family situation has improved and this obligation does not violate due process. See In re Miller, 433 Mich at 344-345.

We decline to address the respondents' Fifth Amendment argument in depth for a number of reasons. This issue was never raised at the trial court level where appropriate steps could have been taken to address the problem. Issues first raised on appeal need not be reviewed by this Court. Ledbetter v Brown City Bank, 141 Mich App 692,

702-702; NW2d (1985). In addition, in light of the reasoning behind this Court's decision in In re Johnson, 142 Mich App 764; ___ NW2d ___ (1985), we do not believe the issue has merit.

We also reject the respondents' contentions that the steps taken by the probate court do not comply with federal policy of the DSS manual. It appears from our review of the record that reasonable efforts were made to reunite this family. It is also apparent from the record that the behavior of the probate court did not evidence a bias or prejudice that would entitle the respondents to a new trial.

Respondents' final challenge addresses the constitutionality of the probate code. This challenge has also been previously made and rejected by this Court. See In re Martin, 167 Mich App 715; 423 NW2d 327 (1988) and In re Gentry, 142 Mich App 701; 369 NW2d 889 (1985).

Affirmed.

Roman S. Gribbs /s/

Mark J. Cavanagh /s/

Robert B. Burns /s/

APPENDIX B

Detroit, Michigan

January 9, 1989

EXCERPT

THE COURT: Based on the information provided to the Court through testimony and written documents produced as evidence, the court makes the following findings relative to this matter, dealing, of course, first with the petition requesting rehearing for purpose of termination of parental rights. The court would also note that in addition to the testimony and written documentation produced into evidence and of the exhibits, the court also had opportunity to review the legal file and the social file in this matter, which are considered to be reflective of the history of this case. In doing that, the court found

that the significant events in this case are as follows:

That, following that a detaining order was requested on March 27, 1984, relative to the child Samier Amer, who was born on November 18, 1983. And it was granted pursuant to a 3200 filed by Oakwood Hospital. And the child was at that point detained at Oakwood.

On March 28, 1984, a preliminary hearing resulted in an authorization of the petition, and placed the child in emergency shelter care or with suitable relatives, if any, under the Department of Social Services supervision. The case was continued to pretrial on Referee McKnight's docket for April 16, 1984, and probable cause was waived.

On April 2, 1984, a petition was filed alleging abuse of the child Samier Amer, who it alleged was four months old, had human bite marks on both heels, neck and left side of the stomach, had injuries described as fractures to the right humerus, the left

clavicle, the left upper tibia, and distal, and mid-left femur. There were five in all of different ages, and was diagnosed as also failure to thrive. The petition further alleged that the parents were unable to explain the injuries, other than to indicate a babysitter, who they refused to name, and the child's one-year old brother caused the bites. Doctors had ruled out metabolic disturbances or disease or deficiency.

On September 4, 1984, Referee McKnight found that the allegations contained in the petition filed on April 2, 1984, had been substantiated, and recommended that the child Samier Amer be made a temporary ward of the court, continued in temporary custody of his aunt, under supervision of the Family Treatment Unit, and the case continued to October 31, 1984, for further dispositional testimony. An order to effect that was entered on October 17, 1984.

On November 26, Referee McKnight completed the dispositional hearing, and

recommended an order be entered placing Samier in the home of his maternal grandmother, and requiring the parents to participate in a treatment plan specified as follows:

One, that the mother and father be seen at the Clinic for Child Study and followed through with its recommendations. Two, that the mother and father be involved in parenting classes. Three, that the mother and father, if required, be involved in counseling with Miss Ellen Rumman at the International Institute, or other appropriate agencies, until terminated by the therapist. Four, that the mother and father visit the child under the supervision of the Family Treatment Unit, with phased-in visitation to be allowed, if at all, only after clinic evaluation. An order to that effect was entered December 18, 1984, and the case was continued to May 1, 1984, for statutory rehearing.

On October 18, 1985, the first statutory rehearing was completed by Referee Chester Drake, who had replaced Referee

McKnight. And he found that it would be contrary to the child's welfare to be returned to this parents, and recommended the child continue as a temporary ward, placed with the maternal grandmother under the supervision of the Family Treatment Unit, and the case continued to the next statutory review on March 11, 1986. Referee Drake further recommended visitation be extended to seven days a week until the next stat, under supervision, two days a week individual therapy and family counseling. And an order to that effect was entered on October 25, 1985.

On November 22, 1985, an order to take into custody was issued for Mohammed Amer, born December 11, 1982, and Suehier Amer, born November 18, 1983, the twin of Samier. On November 25, 1985, a preliminary hearing was begun by Referee Weberman and continued to December 2, 1985. And on December 2, a petition was authorized as to Mohammed and Suehier, and pretrial was set for

December 13, 1985, before Referee Drake, and the children were ordered placed in emergency shelter care under supervision, with visitation only under the Department of Social Services supervision.

On December 5, 1985, a petition was filed that alleged that the home environment was not fit for the children Mohammed and Suehier Amer, because on November 21, 1984, their sibling, Samier, a two-year old, was brought to the hospital with no vital signs. His extremities were rigid. He had green stool. And his hair and body and diaper were dry. The child was diagnosed as clinically brain dead and put on a resuscitator. The mother stated she had all three children in the bathtub and was running water for them when she heard the phone ring. She went to answer it and heard a thump. She found Samier on his back in the water up to his ears. There was a bruise on the child's cheek.

In March of 1984, Samier was made a temporary ward of the court due to abuse, and

had been returned home on October 18, 1985.

On December 13, 1985, Referee Drake disqualified himself because of his prior involvement in returning the children to the parents. And so the matter was then on December 17, 1985, assigned to Mary Ann Quinn, as Referee Drake's alternate.

And then on December 17, 1986, a judge demand was made by attorney for the respondents, and the matter was assigned to Judge Martin T. Maher.

On March 26, 1986, a petition to amend the petition was filed by the children's attorney, Mr. William Ladd, to add the following: That Samier Died on November 232, 1985, at Children's Hospital. An autopsy concluded that cause of death was a homicide. That mother was arrested and charged with second degree murder and bound over to the Circuit Court. That Samier had been a temporary ward of the court based on physical abuse. That the parents previously reported to the medical personnel that the child Samier

had problems feeding. That they on occasion had to force feed him, and that he was a difficult child who was different from his siblings. That throughout the family involvement with the court the parents had insisted that their problems with Samier were peculiar to that child. That, however, the oldest child, Mohammed Ali Amer, had been admitted to the Botsford Hospital in August 1983 for gastroenteritis. During that time the child was in the hospital the parents attempted to force feed the child, despite instructions from medical staff that this was not good for the child. The parents also said that Mohammed was a bad baby due to his infancy. The child Suehier was eventually examined at Children's Hospital. X-ray indicated evidence of old trauma to the child's left tibia.

On May 12, 1986, a preliminary hearing was held before Judge Maher, and at that time he entered an order setting the case for trial on June 26, 1986, requiring the

parents to reimburse the county in the sum of $450 for attorneys, at $25 a week, and pay $96 a week to the State for the children's maintenance. Further, the children are to be transported to the hospital for examination by Dr. Magagorski, and report to be provided to the court. Cost for report and examination to be paid by the parents. All visits of parent and children to be in the a.m., and the department to maintain religious continuity, i.e., mosque services and diad. That order was entered May 16, 1986.

On June 13, 1986, a petition for clarification and enforcement of the court's order of May 12 was filed by Attorney Harold R. Goldberg in behalf of the respondents, regarding failure of the Department to allow children to attend religious services at the Mosque of the parents and placed in an Islamic foster home, if one could be found that's appropriate. On June 17, 1986, Judge Maher held a hearing on the motion and denied the motion, and continued the matter then for

trial to September 10, 1986.

the matter was ultimately heard in terms of adjudication by Judge Maher on October 28, 1986, where he found that the allegations contained in the petition had been substantiated, and ordered that the children be placed in the temporary custody of the court and the case continued to December 15, 1986, for disposition. The children were to continue in the foster care under the Department of Social Services supervision, and the parents referred to the clinic. An order to that effect was entered on October 31, 1986.

On December 2, 1986, a motion to replace the attorney for minor children, and a motion for dismissal, and a motion for evaluation of the natural parents was filed by Attorney Lawrence Strauss for the parents. The motion to dismiss was based on the fact that the parents were found not guilty in Circuit Court. That the parents have followed the recommendation of the Department of Social

Services. And that numerous complaints regarding standard of care by the foster parent, which have not been addressed appropriately by the Department. And on December 3, 1986, Attorney Strauss withdrew the motion.

On December 10, 1986, an order was entered placing Baby Girl Amer, born December 9, 1986, in foster care of emergency shelter care. In transferring the jurisdiction from Oakland County to Wayne County, the child at that point having been born in the hospital that was located in Oakland County.

On December 12, 1986, a preliminary hearing was held by Referee Francis Pitts, who authorized the petition and continued detention and set the matter for pretrial on Judge Maher's docket for December 15, along with the other matter that was already scheduled for that day.

And on December 15, a petition in behalf of Zinabe Amer alleged a previous history relative to the other siblings was

filed. And a hearing relative to disposition was completed on that, however, and order was not entered on that day.

On February 11, 1987, a petition to move the matter to the docket of the presiding judge of the Juvenile Division was filed by the prosecuting attorney, at that point Judge Maher having been transferred to the Estates Division of the Court.

And then on February 26, 1987, a motion to suspend visitation was filed by the children's attorney.

Ultimately on March 5, 1987, a motion was entered by Judge Maher relative to the hearing on December 15, making, Zinabe, who was then a ward of the court in their current placement, which at that point was foster home. Judge Maher further ordered that the parents are to attend counseling and parenting classes. Parents are to give a list of relatives and/or Arabic homes for investigation for juveniles placement. That DSS and foster homes are to use the children's

Arabic names. That the family was to receive family therapy, with Mohammed Ali receiving individual therapy. And the matter was then continued for statutory review on March 10, 1987.

On March 5, 1987, the motion to remove the guardian ad litem was filed by respondents' attorney. March 6, 1987, all the motions that -- on March 6, all the motions that had been -- on March 6, 1987, a motion to reunite minor children with their parents forthwith and in concurrence with the petition to move the matter to the docket to the presiding judge of the juvenile division was filed by respondents' attorney. On March 10, 1987, an order was entered by Judge Barsamian granting the motion to transfer the case to the docket, and a hearing on the motion to suspend visitation of the parents, said guidelines between petitioner and DSS, reunite the children with their parents and remove guardian ad litem.

On May 7, 1987, an order was entered

denying the removal of the guardian ad litem, removing the guardian ad litem and continuing the case for further testimony.

On May 29, 1987, statutory rehearing was completed. And the court found that return of the children to the home of the parents would be contrary to their welfare, and ordered that they remain temporary wards of the court, which was again continued for review. At that time the court also ordered that the parents are to participate in therapy, their therapist selected by DSS of Wayne County or the Clinic for Child Study, to deal with and accept responsibility for the non-accidental death of Samier. That parents are to participate in Parents Anonymous. That parents are to meet regularly with Ms. Fine, who is to coordinate and monitor all treatment efforts both as to the parents and the children. That Mohammed is to continue individual therapy. And that the children are not to be placed with relatives. And that the mother's visits with Mohammed are terminated

until further order of the court.

On June 5, 1987, a motion to reconsider order relative to visitation of the minor child by the natural mother was filed on June 25, 1987. The court entered an order denying the motion to reconsider.

On December 16, 1987, a petition for rehearing was filed requesting permanent custody, and alleged the parents are unable to provide a home fit for the children by reason of neglect, and that the children would be neglected over the long term future, alleged the abuse and neglect of Samier. That Mohammed Ali, Suehier and Zinabe were made temporary wards of the court as a result of Samier's death, and placed in foster care, where they remain under DSS supervision. That although parents have consistently involved in therapy in order to accept the responsibility of neglect and abuse and failure to protect that led to Samier's death, they refuse to acknowledge who was responsible for the non-accidental death of Samier.

Then on December 23, 1987, a petition to have parents and minor children examined by independent mental health professionals was filed by Mr. Baum. And on January 8, 1988, a discovery motion was filed by Mr. Baum in behalf of the parents. On January 12, 1988, a hearing was held relative to the motion to have the parents and minors examined by independent health professionals, and a supplemental order of discovery -- that a supplemental order of discovery was entered. On January 14, 1988, the court entered an order denying having met mental independent health examination. On January 22, 1988, the statutory review was continued on February 19, 1988 for pretrial on the permanent custody petition.

On January 19, at the hearing relative to the pretrial on the permanent custody petition, the matter was set for hearing on May 13, 1988, along with the statutory review. And so we became then a two-track hearing, one dealing with statutory

review and the other one dealing with permanent custody.

It was at that time that the court ordered that Mrs. Nancy Gray was not to have any further therapy or counseling relationship with the parents, and nor was she to accompany them to their therapy sessions or to the Clinic for Child Study.

On May 2, 1988, Attorney Baum filed a petition asking for clarification and modification of order of the May 29, 1987. And subsequently a hearing was held wherein the court there specifically indicated to Mr. Baum, as well as to the parents, that the court meant exactly what it said, and further, tried to make as clear as possible what it meant by that order. And since that time there has been numerous hearings dealing with the termination of the parental rights.

When children are found to come within the provisions of the Juvenile Code, as you all know, those of you who are professionals in the court system, the court

has a number of options that it can consider in terms of dealing with the problem.

When Samier first came to the attention of the court, it was felt that because of the nature of the injuries and the severity that the child could not be allowed to remain in the custody of the parents, and therefore the court sought relatives, which is appropriate, rather than putting them with strangers. And was able then to find a couple of relatives who were willing to become involved and provide a home environment for this child, pending efforts by the Department to rehabilitate the parents.

It's very significant to the court that when the Department, then pursuant to the action of the court, developed a treatment plan, as Mr. Baum has indicated, which is goal oriented, identified specifically the goals that are to be achieved by the parents. The parents were extremely cooperative. The worked real hard. They were anxious. They were motivated. They were interested,

everything that we would hope to see in parents involved in these kinds of cases. The only thing they were not able to do, or refused to do, was to tell the court or any others that they dealt with as to how the injuries occurred to this child.

We're talking about a four-month old who could not have inflicted those injuries upon himself. And as hard as the professionals worked with these parents to get them to acknowledge how these injuries occurred, they failed in that respect. And but what happened here was that the professionals were so impressed with the efforts by the parents that, I guess, they agreed or decided that there had been experiential acceptance of responsibility without verbalization, as Mr. Baum has talked about on so many occasions in this case.

And I think that in his remarks and in his report, Dr. Schornstein indicated that while these people have not acknowledged the injuries, that they have done everything

that's been asked of them, and that as long as they continue to participate and be involved in that, it would be safe to liberalize their access to this child. And so based on that, the parents were given liberal access to this child, and within a month the child was dead. The medical examiner's report, which was dated November 27, 1985, said that Samier died of blunt forced injury to the head, causing stelit(??) fracture of the skull over the back of the head, bleeding in the head, and contusions of the brain. That there was one impact to the back of the head, the pattern, the extent of the injuries indicated that the head was moving at a great velocity and struck a fixed object, and the manner of death was classified as homicide.

Judge Maher, after listening to extensive testimony, came to the conclusion that Samier Amer was killed. That he did not fall in a bathtub, as had been stated by the parents. That this child could not have done this to himself. That it would have required

an adult to administer the injury that caused death.

Now in that house that night were only two adults, the father and the mother. And based on the testimony presented to Judge Maher, it is clear to me, in reviewing his transcript, that what Judge Maher found on that occasion that one of these parents killed their child intentionally, and the other one is protecting that parent. Because of that kind of a finding then, when the court intervened relative to the other children, the court cannot just ignore that which has transpired in the past. Perhaps if the case had initially came to the court as the death, the killing, that might have been more plausible or, you know, we all want to believe that parents can't do these things to their children. But in this case you had a severe injury, unexplained, cannot be caused by the child, and then the death. That could not have been inflicted by the child or the other children in the family,.

So Judge Maher, in the course of his disposition, set forth the guidelines that the court has read in terms of trying to achieve return of these children to the parent or parents. And what he basically did at that point was turn it over to the Department of Social Services and say here is what I want to see happen, and expecting the Department then to follow through on seeing that the treatment plan, again, which is goal-oriented, was followed.

And again, it seems that the parents have done everything we've asked them to do. And they've gone to Parents Anonymous. They have done everything, but one thing they have not done is that one goal set forth in Exhibit 5 relating to the acknowledgement of the killing of their child by one of them.

Now, in reviewing the testimony presented by the various professionals, and we've had many, all with a lot of experience, all well-intended. And I guess initially I was disappointed that the therapist that we

referred the Amers to wouldn't deal with the issue that they had been referred there to deal with, but instead, other issues were dealt with.

The depression, Mr. Baver talked about dealing with depression. Dr. Epstein talked about dealing with the stress, the grief problems of separation from other children, problems dealing with child care workers. They dealt with a lot of problems, but none of them related to the problem the court had sent the family there. And as I said, I kind of was disappointed in the therapy in not being willing to force the parents to deal with that particular problem, and where instead dealing with the multitude of other problems that obviously were beneficial to the parents. I don't doubt that. And perhaps in those respects they have changed. But I guess in reviewing my notes in preparation for this hearing and meshing the various professional's testimony together, it appears that none of the professionals expect

to be told what to deal with. That the clients who go there come with whatever they think they need to deal with, and that it is not their job, as I think one of them said, to be detectives or to pull from these people admissions of guilt or whatever.

But it is interesting to the court, as the court has pointed out at times, even though they were told -- I don't think I could have been anymore clearer to these parents. And by the way, language is not an issue here. I reviewed this file carefully. These people have been here a long time. They have assimilated to our society in many respects, and one way they have assimilated is through language. They can speak very well. And the court is very well impressed with their ability to communicate. So it's not a matter of them not understanding what I was telling them. I think I told them loud and clear what I wanted them to deal with, and yet they refused to deal with it.

Now, Mr. Baum, you asked me to

consider that they have experientially accepted responsibility about their actions, and that they do not need to verbalize that in order to benefit. I guess that was the theory under which the court operated the last time they gave Samier back to the parents. And in fact, Dr. Schornstein in his testimony indicated that that's what he had done. He felt that experientially the parents had accepted responsibility, and therefore, it was safe to return this child to the parents. And obviously that was not a correct assumption. And to expect the court at this time to accept that, in light of the history of this case, I think would not be appropriate.

I think that Mr. Derr, when he testified, indicated that there are indeed components here that can be dealt with by the parents. And maybe in dealing with the components, that you can deal with the problem at hand. However, he further said is that we don't know why this child died and how this child died, except for the general information

provided by the coroner based on his examination. And until we know and how this child died, we cannot know if the components that these parents are dealing with are indeed the components that are going to be safe to allow the safe return of these children.

Now, there has been a lot of discussion about the failure of the Department and the failure of the agency to provide a treatment effort to provide the sort of benign environment in which these parents can operate, and there being pointing out of numerous problems with the foster parents with Mohammed Ali, what he saw, what he didn't see. There's all kinds of issues that have been out there. And there are issues that are very -- cause a lot of concern for the court. And as Mr. Ladd said, if you deal with those specific individual issues, I think what can happen is you can get side tracked, because the bottom line here is that Samier Amer at four months sustained five fractures and bites on his body, and was a failure to thrive child. And

the parents were worked with, and the child returned, and within a month the child was dead.

One of the professionals -- and I forget which one -- indicated the best way to be able to predict the future is to look at the pattern of that past behavior. And there's nothing that I have seen here that would convince me that this would not recur. Basically nothing has changed. We continue to deny. Dr. Fischoff, who I think all of us are familiar with, indicated in his testimony that with five fractures and death, the children are at high risk. And if high risk, permanent custody and adoption is the preference.

I think I've tried. I think the Department has tried. But somehow -- and I think that others have tried, now, beginning with Ms. Rumman, Mrs. Gray, on through each in their own way have tried to assist these parents, and each has been unsuccessful in getting them to accomplish that one final goal that needs to be achieved.

I guess what happened here is what happens in many of our cases. Parents participate, they cooperate, they do whatever the court wants them to do, but they fail to internalize. They're unable to take what's been said to them and benefit by it. And I think that's what's happened here.

Now, as the court has indicated, we don't know who killed this child. We know that somebody killed this child. So while one parent is not as culpable as the other, but the other one, who is culpable, continues to support the one who is, and therefore, is not able to provide a safe environment for this child. And in fact, when the child Samier was returned after the first incident, was not able to protect that child. So that ultimately the child was killed.

So it's the court's belief that there cannot be return of these children to these parents short of verbalization of guilt, and that the experiential acceptance of responsibility has failed in the past, and

there is no reason to believe it's going to work in the future. And if we test that at this point, what we're doing is, we're testing at the risk of the life of Mohammed, Suehier, and Zinabe. And I think that's an inappropriate request on the part of this court as to those children.

So the matter comes before the court based on the unfitness of the parents, and it would appear based on our experience with them relative to the child Samier that they are unfit, and that after three and a half years of efforts by the court and by the Department, we have gained very little, and that they continue to be unfit, and that it is not very likely that things are going to change in the future. There's been absolutely no indication that if the court were to continue this matter into the future that they would change.

As you know, the first prong of this process is to determine the fitness of the parents. And the court would find that there is clear and convincing evidence that

paragraph (e) and (f) of MCLA 712.19(a) have been established. Then the court considers the best interest of the children in this case. And that was why I wanted the children referred to Children's Hospital, or the issue referred to the Children's Hospital, because I have a set of parents who are unfit, but if I were to terminate the rights of the parents would it cause great harm to the children. And if that were the case, then merely because the parents are unfit would require me to terminate their rights, but if I felt that it would harm the children, then I'd be willing at that point to continue to work with the parents, because at that point the children come first, and they come first in reality all along here. But if I felt that it were going to be tremendous harm to these children by terminating the rights of unfit parents, I wouldn't terminate.

But I am satisfied, after listening to Dr. Fischoff and others, and the therapist, Ms. Noel, for the child, that we're going to

have children who will have problems and will have far greater problems unless we do something to -- you know, unless we act quickly. We've already delayed substantially. That it would not be to the benefit of these children to linger in foster care.

I think the child who is most severely impacted at this point is Mohammed Ali. And efforts are being made to deal with him. And he seems to be making improvement, but he cannot make enough improvement unless there is support and consistency and no further conflict.

It would appear to the court that these children are entitled to a nurturing and caring and safe environment. That they are entitled not to linger in foster care. And they are entitled to permanency. Therefore, the court would find that their best interest require that there be some finalization here, and that termination of parental rights are in their best interest; therefore, the court will enter an order terminating the parental rights

of the parents to these children, and will commit them to the Michigan Children's Institute for appropriate adoption planning, and will advise the parents of their right to appeal the decision of this court to a higher court within 21 days. If they cannot afford counsel, counsel will be provided for them, as well as transcripts.

(Whereupon the above-entitled matter was concluded.)

APPENDIX C

In the Matter of:	Born
Mohammed Ali Amer	December 11, 1982
Suehier Ahmed Amer	November 11, 1983
Zinabe Ahmed Amer	December 9, 1986

At a hearing held on January 9, 19 89 ; and due notice of the hearing of the matter having been given as directed by the Juvenile Code, respondent(s) _____ did appear on the said date in Court.

THE COURT FINDS THAT BY CLEAR AND CONVINCING EVIDENCE THAT:

1. The allegations made in the (Petition for Rehearing) filed on December 16, 1987 pursuant to M.C.L. 712A. 19 a have been substantiated pursuant to subsections (e) and (f)

2. The placement of the child(ren) in the home is contrary to (their) welfare, and

3. Reasonable efforts have been made to prevent or eliminate the need for removal of the child(ren) from home; and these efforts have not been successful, and

4. Reasonable efforts have been made to reunite the family; and these efforts have not been successful.

5. The child(ren) will be neglected for the long term future.

THEREFORE, IT IS ORDERED THAT said child(ren) be, and (are) placed in the permanent custody of the Court; and all parental rights of ___ Rehab Amer and Ahmed Amer ___ are terminated and the child(ren) (are)

committed to the Michigan State Department of Social Services for admission to the Michigan Children's Institute. The Superintendent of Michigan Children's Institute is hereby named special guardian to receive benefits due the child(ren) from the government of the United States.

_____

Y. GLADYS BARSAMIAN

DATE: January 9, 1989

JUDGE OF PROBATE
JUVENILE DIVISION

APPENDIX D

Detroit, Michigan

Monday, February 6, 1989

Commencing at about 9:00 A.M.

THE COURT: This is in the matter of Mohammed Ali, Suehier and Zinabe Amer, Juvenile Court case number 84-241,317.

The matter before the court this morning is a Motion for Stay of Proceedings.

Counsel, would you identify yourselves for the record.

MR. GRODMAN: Howard Grodman, Assistant Attorney General, representing the Department of Social Services. And with me is Kim Sanford from the Department of Social Services.

MR. LADD: Bill Ladd from the Juvenile Defender Office on behalf of the children.

MR SCHWARTZ: Good morning, Your

Honor. Jeffrey Schwartz on behalf of the parents, who are present in court.

THE COURT: Counsel, would you waive the reading of the petition?

MR. SCHWARTZ: Yes.

Your Honor, on behalf of the parents I have brought a Motion for Stay of Proceedings for two reasons, although one may be moot due to a change in the court rules. However, the last stay that I filed concerning a permanent custody matter was not an automatic stay of the proceedings. And I understand that might be the case now. Either way, I filed the motion to preserve the record.

Your Honor, I'd like to indicate to the court that we're asking for a stay if proceedings for two reasons: Number one, so that any adoption proceedings would be stayed pending any decision by the Court of Appeals.

Number two, we would like to ask the court to reinstate the status quo concerning visitation pending the appeal for the reason,

with all due respect to the court, not all lower court decisions are in fact affirmed. That in the event the Court of Appeals feels it necessary to reverse for any reason or to remand for any reason, any block of the visitation of any gap in the visitation would be detrimental to the parents as well as the children. If they are in fact going to be in a position to have the children eventually returned, I think it would be to the benefit of both the children and the parents not to have a gap in the visitation.

I anticipate and have been told that there would be an objection to the stay. I am not sure what the objections are, so I would ask the court to allow me a short rebuttal to any arguments given in opposition.

THE COURT: Why don't we have the attorney general go next. Or would you prefer --

MR. GRODMAN: Either way, Your Honor.

Your Honor, on behalf of the

Department, we strongly oppose the motion regarding reinstating visitation. Of course, it's our understanding of the law that no adoption order can be finalized pending the appeal process. And we don't intend to commence those proceedings before the court until the appeal is resolved.

But regarding visitation, the Department of Social Services has opposed visitation since May of 1987. And their opposition to the visitation between these parents and these children is implicit in their filing of a permanent custody petition. If they felt it was in the best interest of the children to visit their parents, they would not have filed such a petition.

And we also believe that it is implicit in the court's findings that permanent custody be taken of these children, that visitation is not in their best interest. In order to make the findings that the court did, Your Honor had to find that the children came within Section 19a. of the Juvenile Code,

which it did. And then following that the court had to make a determination as to whether or not taking permanent custody would be in the children's best interest. And by the fact that the court took permanent custody, the court felt that was in the children's best interest.

Basically the Department opposes the visitations for two practical reasons: One of them is a matter of security. And I would ask that somehow the fact that there was a demonstration that took place after the court rendered its decision be placed on the record either by Your Honor, or I'd be happy to call Mr. Douglas to put that on the record, the reason being is that I expect when this case goes to the Court of Appeals that this issue of visitation pending the appeal is going to go to the Court of Appeals. And I think that the Court of Appeals ought to know that security is a real issue in this case, and --

MR. SCHWARTZ: I'd object to the

term "demonstration." I am not sure exactly what that means, number one. And number two, being displeased with the outcome and showing emotion has nothing to do with or should have nothing to do with any concerns of any security. I don't think that that's a matter of any record. That's something that is being given as opinion by counsel. That hasn't been, number one, substantiated. And even if it is substantiated, it isn't necessarily relevant to these proceedings, and I would object to that characterization.

I think the court has to make its determination based on the facts and circumstances as the court knows it and based on the record.

And I would save any other rebuttal for the appropriate time. I apologize to counsel for rising at this point, but I do think that particular comment or that particular shred of fact would be inappropriate for this hearing, and felt obligated to rise for that reason.

THE COURT: You want to respond?

MR. GRODMAN: I'd just like to acknowledge that I was not present at the hearing. I was in the hall, however, and I noticed that at least a dozen deputies were here to take care of a situation that took place. It took over a half hour, in my opinion, in the hallway to settle down the situation before the court could resume business. I admit that it's not a matter of record, and I'd be happy to call somebody to testify who was present, and I think Mr. Douglas would be an appropriate individual for that.

MR. SCHWARTZ: Except for the fact that counsel just admitted to now that he wasn't here, had no idea what it was about, and just raises that as a red herring to inflame the court, and I don't think it's appropriate.

THE COURT: Well, I think security is an issue in terms of being able to retain custody of these children. I think that

counsel is being honest in indicating that he wasn't here. He was able to observe what took place in the hallway, however. And I think he's trying to be very cautious in how he frames his argument. But I do think it's an issue that needs to be dealt with. And I think we need to move on, however.

MR. GRODMAN: Thank you, Your Honor.

Our other major reason for opposing visitation -- of the Department's, that is -- is that we believe that there has been ample testimony that contact between the parents and the children are detrimental to the children.

In particular, I would note that Karen Noel, Mohammed Ali's therapist, and Dr. Schornstein from the clinic, the psychiatrist from the clinic, testified at trial. My understanding is that their testimony addressed those matters. And I am also aware that there were other testimony at previous statutory hearings in which it was testified to that visitation between the parents and the children are detrimental to the children.

For those reasons, I would ask that the court deny the motion insofar as it requests visitation be reinstated.

Thank you.

MR. LADD: As to the efficacy of Mr. Schwartz' motion, I should note that Mr. Grodman is correct as to the fact that no adoption can be entered by this court until there is a final decision by the Court of Appeals affirming the order terminating parental rights.

And I draw the court's attention to MCLA 710.41 sub (2) sub (c). However, the court does have the power to enter any other order dealing with placement of the children pending a final decision by the Court of Appeals. A stay of proceedings here in that case would be of little significance, because the final decision of an adoption would wait the decision of the Court of Appeals.

Second of all is the issue of whether or not visitation is in the best interest of the children. I think Mr. Grodman

is correct as to the effect of the court's decision, that the court has found that continued contact between the children and the parents is not appropriate. Mr. Schwartz has offered nothing to rebut the findings of the court, nor has he offered any new evidence that would lead this court to believe that it would be appropriate at this time to continue further visitation.

And I think it is appropriate and important that the court consider the question of the safety and the wellbeing of children when making decision on continued visitation, first of all, because the court dealt to a great extent in this case with the issues of a need for permanency planning, a question of whether the children would be in a situation where they are confused about their situation and the effect of contacts that they had with their parents' contacts. And what Mr. Schwartz is asking is that be allowed to be continued. And the evidence here was that was not beneficial to these children.

Beyond that, there is this real security question in this case, and as to the protection of the children, the protection of all of the other parties involved. I was present at that hearing. I was personally threatened by one of the spectators here. And it's difficult for me to believe that under those circumstances that these children could be safe at any kind of visitation.

There's been a history here of questions of the appropriateness when the parents visited, where the parents visited. There was a situation where the parents and one of the foster parents arranged a visitation outside the supervision of the agencies involved here.

And again, there's no evidence and there is nothing to support a finding by this court that there is anything new that this kind of pattern of behavior by the parents would be changed. And in fact there would be no -- After this court's termination there would be no reason why the parents would abide

effectively by this court's order when they had not in the past. and because it's not in the best interest of the children, because there is no assurance that the children and even the workers can be protected under the circumstances here, and where there's no evidence that -- and no new evidence to support a finding by this court today that it's more appropriate to allow visits than it was three weeks ago, I would ask the court to deny any visitation with the children.

As to the general question of the stay of the adoption proceeding, I would merely ask the court to state that it's bound by MCLA 710.41 as to proceeding on final adoption, which the court cannot do until the Court of Appeals decides.

MR. SCHWARTZ: Your Honor, in response. First of all, no evidence or no requirement to show anything to rebut the proceeding is needed. The court has jurisdiction under MCR 7.208 Paragraph (E) and MCR 7.209 Paragraph (1) to stay the

proceedings and to retain jurisdiction and to stay those orders.

The whole point of the matter is -- and counsel admittedly -- and I am somewhat of a disadvantage because I did not try the case. However, this case is quite a notorious case, one that I have been following and have heard about and am aware of some of the proceedings.

I would indicate to the court that there was evidence -- At least it's my understanding that there was evidence to the contrary. That the children would be safe during visitation and that it was in their interest. With all due respect to the court, the court decided to rule in one manner in one respect. But the point is there is evidence on the record that has to be weighed now by the Court of Appeals in terms of whether or not the children would be safe and whether or not any dangers exist concerning any visitation or in fact return of the children. They try and make it sound like there was no

evidence whatsoever indicating contrary to the couple of people that testified that it wasn't in the best interest of the children.

In terms of security, unfortunately I think that this case is one that emotions become high in, and I don't think it's unusual before this court of any court in Juvenile Court to have people who are emotionally upset about a decision. However, my understanding of this, quote, unquote, "demonstration" was that one of the parties involved became physically ill because of the emotional outcome, and some of the people were upset. But that doesn't mean to say that these children were going to be snatched or anybody's life were going to be in danger or anything to that effect.

There was visitation throughout most of this case. There was no indication or no scintilla of any evidenced that these children were in any danger, that they were in any danger of being kidnapped or any other result that they may want you to believe. There's

nothing to support that.

Unfortunately there's been a ton of friction of not only between the workers and my clients, but between Mr. Ladd personally in this case. And I would hope that all parties concerned don't let their personal feelings towards each other get in the way of professionalism or the way they do a job.

It's my opinion, based on what I know about this case, that the Department and Mr. Ladd representing the children had no intention ever of letting these children come back, no matter what the circumstances were. And that may be one of the basis for the appeal.

Again, I haven't had an opportunity to read the transcripts and to see what the situation is. And I am trying my best to keep this on a non-personal level, hoping that the other parties would as well.

That point is that should the Court of Appeals be persuaded that this case should be either re-adjudicated or that the process

should continue in efforts to return these children at some point to their parents, it would be detrimental -- And I don't see how they can say that it would not be detrimental to the children to have a total break off in relationships with their parents on the possibility -- and there's always a possibility that the Court of Appeals will ask that this case should be reviewed or sent back for some reason.

I don't see the danger in allowing the visitation that was allowed all the way up until the point that the order was entered terminating their rights. I think that during that time -- And this is a custody case, so that I would hope, and usually it's the procedure, that the Court of Appeals tries to come down with an opinion in this case in a quick enough manner that any detriment to putting this off any further would be minimized. That I don't see the danger in allowing the visitation as it was at least before, pending the Court of Appeals decision.

I think that what we have here is emotional arguments being brought before the court as opposed to just a hard fact situation. There's no indication -- The parents live here. The father is employed. Their parents are here. There's no reason that they would leave. There's no reason for them to try and endanger these children to make this worse. Hoping that if the case does come back that they can move toward resolving this and getting their family back together.

And I would ask the court to consider it. It's not an unusual motion. It's not one that is asking for something that's never been done. And I would ask the court to consider reinstating the status quo as it was pending the decision of the appeal.

THE COURT: Without going into specifics of the case, the court will find that it is bound by MCLA 710.41 in terms of any imminent adoption proceeding, so that the parents can know that there will be no final adoption in this case until they have

exhausted their remedies.

In terms of visitation, this is another matter. When the Department files a petition for permanent custody, at that time all visitation rights are ceased, because it is often believed that everything that has been done to achieve return of the children to the parents have been exhausted. That I am approaching it from the Department's point of view. And at that point they're asking for termination, and that it would not be then to the children's benefit to continue to try to reunite the family. And in some instances it is to the detriment of the children.

It was very unusual in this case that the court allowed the visitation to continue. And in reflecting on the case, I guess I allowed it to continue for two reasons: First of all, I was hoping very, very much that the parents would get the message of what was expected of them and would comply and we would be successful in achieving reunification of this family.

Secondly, I did not ever anticipate that this case would take as long as it did to conclude. It took over, I think, a year to get all the testimony that was necessary to be able to come to some decision here. And frankly, that caused the court a lot of concern.

As has been indicated, this was a two-prong approach: One relates to the fitness of the parents, and the other relates to the best interest of the children. And when I got to the point of determining the parents were unfit, I guess I had a whole lot more trouble deciding whether after having allowed these children to maintain contact with their parents, what was I going to do to the children. Even though their parents were unfit, was I going to harm them more by terminating the rights of unfit parents or freeing them for permanency.

And I guess in analyzing the testimony that was presented, I ultimately came to the conclusion that while it might be

painful to the children to terminate that relationship initially, that it was far greater for the long run for their benefit, and that it was indeed to their best interest that the rights of their parents can be terminated so they can proceed to a permanent situation.

I think at this point to reconnect for any length of time in the future would be to their detriment, because it would just maintain that connection that the court feels is not an appropriate one.

I do believe that there is some security issues here. I don't believe these parents are going to necessarily snatch these kids and run out of state with them. But I do think in terms of visitation there's a lot of water that's gone under the bridge here. And I think that there has been some -- I would have some concern for the people, the Department, et cetera; therefore the court will deny your request for stay of proceedings.

MR. SCHWARTZ: Your Honor, I thank the court for its consideration.

Just for the purposes -- And I hate to belabor the court. But just for purposes of the record for the review, I would ask the court to indicate what the final -- the last statement the court indicated, which is in terms of the concerns of the security, I would ask the court to at least delineate for the record what the court is basing those concerns on.

THE COURT: The court is basing those concerns on the fact of what occurred here on the last day. And that there was quite a -- The parents showed up with a substantial number of individuals from the community. And there were threats that were made to various individuals. The fact that when the matter was pending the parents did take advantage and made arrangements with the foster mother to meet without permission or knowledge of the Department. And I think once you begin visitation it's a lot easier for the

parents to trace where children are. And I have a concern now that the parents realize what is happening here that they would be even more inclined then to do something that might be to their detriment as well as to the detriment of the children involved.

MR. SCHWARTZ: Thank you, Your Honor.

(Whereupon the above-entitled matter was concluded.)

APPENDIX E

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF WAYNE

JUVENILE DIVISION

In The Matter of:
Juvenile Court No. 241,317

MOHAMMED ALI AMER,
SUEHIER A. AMER,

Minors

DEPENDENCY & NEGLECT

DISPOSITION

BEFORE THE HONORABLE MARTIN T. MAHER, Judge of Probate, Juvenile Division, Detroit, Michigan, December 15, 1986

APPEARANCES:

For the Department of Social Services: MS. CAROLYN BREEN
Assistant Prosecuting Attorney

For Respondent Parents: MR. LAWRENCE STRAUSS
Attorney at Law

MR. JOSEPH LANGO
Attorney at Law

For Minors: MS. K. LONERGAN
Juvenile
Defenders Office

Detroit, Michigan 48207

Monday, December 15, 1986 - at about 2:35 P.M.

(Court, counsel and all parties present)

THE COURT: Let the record reflect this is Wayne County Probate Court, Juvenile Division, case number 84-241,317.

Would the parties please identify themselves?

MS. BREEN: Your Honor, Carolyn Breen from the Wayne County Prosecutor's Office.

MR. STRAUSS: May it please the Court, Lawrence Strauss appearing for Mr. and Mrs. Amer.

MR. LONGO: Joseph Lango.

MS. LAWSON: Patricia Lawson, Department of Social Services, Protective

Services.

MS. LONGERGAN: Katherine Lonergan, substituting today for Bill Ladd, representing the children in this case.

THE COURT: Okay. The Court's had an opportunity to talk to the attorneys in chambers. Based on those conferences the attorneys have stipulated to and I believe they have talked to their clients.

What I'm going to do first of all is take care of the petition number 86-106,345 regarding the matter of the baby girl Amer.

It's my understanding, Mr. Strauss, that after talking with you and you talked to your clients that they will stipulate to the Court making this child a temporary court ward; is that correct?

MR. STRAUSS: Yes, Your Honor. My clients understand that's based upon the considerations that in my opinion would be the result if your Honor had to make a ruling. That you do have jurisdiction over this child. And, we're treating this matter as a family

consisting of three children. We would like all of the children returned to the parents as soon as possible, ideally.

However, we would like the Department to do whatever it could at this point in time to provide the maximum amount of visitation with the newborn child so that as long as we're all entertaining the idea of having this family reunited. We're concerned about possible damage being done to the newborn child by not being with its parents.

THE COURT: The Court will accept that stipulation also based on case law of In Re: La Flure and make -- What's the baby's name?

MS. BREEN: Your Honor, at this point we would ask the Court to amend the petition. The child's name is Z-I-N-Z-N-E.D

THE COURT: Is that Z as in zebra?

MS. BREEN: Yes, your Honor. It's Z as in zebra and then the B is B as in boy.

THE COURT: Is there a middle initial?

MS. BREEN: It's A, according to the parents.

THE COURT: The Court will change the petition from Baby Girl Amer to Zinabe A. Amer a temporary court ward.

The Court, after talking with the attorneys -- Well, just a couple of things. I'm going to give you a statutory rehearing date. That statutory rehearing date is going to be March 10, 1987, at 8:30 a.m. Normally, we would set a statutory rehearing date of sometime in July. But, I want to keep abreast of this case, probably more so than my other cases, to find out what's happening.

At a statutory rehearing what happens is the Court gets reports. Those workers, listen, because those reports are going to be filed two working days prior to the date of the hearing. And, normally, if I don't receive those reports at that time I assess those people responsible for filing those either $200 or $100, depending on how much attorney fees are involved.

The Court listens and looks to see what the parents have done to have the child or children reunited with them. That is, after they have worked with the worker. In this case, I would assume they're going to have counseling, parenting classes and those types of things. And, family therapy.

I'm also going to be looking at what the workers have done to try and reunite the family.

The Court's going to order that the parents give a list of relatives for potential placement. After the Department of Social Services has had an opportunity to investigate these relatives and are assured that they are convinced that would be a proper placement, at that time, talk with their attorney, Ms. Breen and she will contact the other attorneys for the child and for the parents. I believe there's going to be a stipulation at that time to have those people investigated or report from the psychiatrist.

The parents are also to provide

names and addresses of Lebanese, Arabic names for foster care licensing potential and for potential placement of the children.

The Court as well as the attorneys for the child and the State are very concerned with the young child; that there not be too much psychological damage done. The reason the Court is not returning to the parents at this time is because the deceased child was an abuse ward at a very young age with multiple broken bones in various stages. So, the Court is extremely concerned.

It's my ultimate objective to return the children to the parents as quickly as possible with the caveat that those children remain safe.

The children will remain in Foster Care. The family shall continue in family therapy and that Mohammed Ali also be involved in individual therapy.

Is there anything I forgot?

MS. BREEN: Your Honor, will reports from the parents' therapists be made available

to the Department of Social Services?

MR. LONGO: Certainly.

MS. BREEN: We would ask that be part of the order.

THE COURT: They're the ones that want the children back, so I'm going to be looking at how much cooperation they're giving.

MR. STRAUSS: We're going to give you everything we can to try to convince you and everyone concerned.

THE COURT: Mr. Strauss, is that correct?

MR. STRAUSS: Yes, Your Honor.

Lastly, if it please the Court, if the Court could give some consideration to placing Suehier and Mohammed Ali -- or the Department, to temporarily in a different foster home. We are concerned since at least at this point we all share the goal of reuniting this family. The fact that this is on information and believe that Mrs. Moore does not use the children's given Arabic

names. And, there are other matters as well where we feel that she is diametrically opposed through her actions and omissions, no matter how well-intentioned they might be, towards the stated goal of the Court reuniting this family.

THE COURT: Are the names Suehier and Mohammed? And, you're saying that the foster mother is not using those names?

MR. STRAUSS: Right. And, also I understand that when the children were placed in foster care they did not speak anything other than Arabic. Now, they are coming back allegedly saying things: "Mommy smacked baby" and things like that in English, which we feel they must be picking up from a source other than the parents. And, other things like that.

Now, Mohammed Ali, when there was at least some bond between the Amers and their son when they would visit, now Mr. Amer's son is telling him, "You're not my father" and things of this nature.

We feel that these things -- We don't think they're coming from anyone in the Department of Social Services. But, they must be coming from that foster home.

THE COURT: That can be handled in the therapy and the therapy that Mohammed Ali is going into.

MR. STRAUSS: We would like to have you order Mrs. Moore to refrain from such conduct, if in fact that is occurring. So that assuming what I'm saying has merit, that she does not create more problems in the interim.

MS. BREEN: For the record, your Honor, it has been the Department's case plan for a number of months that the foster mother does use the proper Arabic names. She is now using the proper Arabic names for the children.

The children when they initially came into care spoke no English. Over the course of months they have been learning the English language through the foster home.

The position of the Department is that the foster mother is not implanting any ideas in the minds of the children.

MR. STRAUSS: We understand that even in front of Dr. Derr that the foster mother was referring to Suehier as Lee.

THE COURT: Well, I'll order that the foster mother use the proper Arabic names for the children.

MS. BREEN: We have no problem

MR. STRAUSS: And, also not take them to church since they're not Christians.

THE COURT: I have no problem with that, but I think what's happening here is when were in chambers I said, "is that the extent?"

MR. STRAUSS: It really is. But, these are some concerns that I think I voiced in there.

I know that this isn't a hearing to attack the foster mother.

THE COURT: I'm ordering the Department of Social Services to investigate

possible Lebanese and Arabic homes; to look at the relatives of the parents. Hopefully, that will alleviate the problem. I don't think it's proper for Mrs. Moore to take the children to church other than a mosque.

MR. STRAUSS: Yes.

MS. BREEN: Your Honor, there has been a hearing before this Court on the issue of the mosque. The Court allowed it to continue as Mrs. Moore was following through. She does not take them to church, is the information that Judson Center workers understand.

THE COURT: I'm not going to require that she take them to a mosque.

MS. BREEN: She is not. According to the worker, she does not.

THE COURT: Mr. Strauss?

MR. STRAUSS: Mr. Amer is concerned about if there was any way to take the children to the mosque during the pendency of this litigation?

THE COURT: No. Not until at least

the statutory rehearing when I can have a better feel of how everything is going.

MR. STRAUSS: Thank you, sir.

THE COURT: All right. Is Mr. Longo going to be on this case or is he just here for today?

MR. STRAUSS: He'll be on this case throughout its duration along with myself.

THE COURT: Anybody dissatisfied with this opinion has 21 days to appeal. If they cannot afford an attorney, an attorney will be provided for them. If they cannot afford a transcript, a transcript will be provided for them.

We are adjourned.

(Whereupon, at 2:46 P.M. court was adjourned.

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

I, Grethel R. Brown, Certified Court Reporter of the Probate Court, Juvenile Division, State of Michigan, do hereby certify that the foregoing pages 1 through 8, inclusive, comprise a full, true, and correct transcript of the proceedings and testimony taken in the Matter Of: Suehier and Mohammed Ali Amer, Juvenile Court No. 241,317, on December 15, 1986.

GRETHEL R. BROWN,

C.S.R. 1127

Detroit, Michigan

February 20, 1987

APPENDIX F

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF WAYNE - JUVENILE DIVISION

FILE # 84-241,317

ORDER

IN THE MATTER OF		BORN
AMER:	Mohammed Ali	12/11/82
:	Suehier Ahmed	11/18/83
:	Zinabe A.	12/9/86

From the findings and recommendations of the JUDGE MARTIN T. MAHER based on (hearing) on December 15, 1986, end due notice of the hearing of the matter having been given as directed by the Juvenile Code, respondent (having not) appeared on the said date in open Court, in person with parents with Atty. L. Strauss, Dss Worker, Judson Center Workers APA C. Breen and K. Lonergan (their) attorney.

IT IS THE FINDINGS of the Court that the acts complained of in the Petition(s) filed 12/5/85 alleging neglect and abuse on Mohammed and Suehier and 12/15/86 alleging neglect on

Zinabe (have) been sustained; and

IT IS FURTHER ORDERED THAT as to petition dated 12/15/86 regarding Zinabe, the parents stipulate to make the child a temporary court ward. Child found to come within Juvenile Code and placed in Foster Care under DSS supervision. As to petition of 12/5/85 children come within Juvenile Code, continued in temporary custody of the Court and remain in their present placement. The parents are to attend counselling and parenting classes. The parents are to give a list of relatives and/or arabic homes for investigation for juvenile placement. DSS and Foster Care homes are to use the children's arabic names. The family is to receive family therapy with Mohammed Ali receiving individual therapy. The statutory hearing and report date are set for 3/10/87 at 8:30 a.m. Reports due two days prior to Court hearing.

DATE 3/5/87

MARTIN T. MAHER
JUDGE OF PROBATE
JUVENILE DIVISION

APPENDIX G

STATE OF MICHIGAN

FOR THE PROBATE COURT, COUNTY OF WAYNE

JUVENILE DIVISION

In The Matter Of:
Juvenile Court No. 241,317

MOHAMMED ALI AMER,
SUHIER A. AMER,
ZINABE AMER,
Minors

_____/

VOLUME I

DEPENDENCY AND NEGLECT - ADJUDICATION

E X C E R P T

BEFORE THE HONORABLE MARTIN T. MAHER,
Judge of Probate, Juvenile Division,
Detroit, Michigan 48207

October 28, 1986

APPEARANCES:

MS. CAROLYN BREEN, Assistant Prosecuting Attorney

On behalf of the Department of Social Services

MR. WILLIAM LADD, Attorney-at-Law, Juvenile Defender's Office

On behalf of the Minors

MR. HAROLD GOLDBERG, Attorney-at-Law

On behalf of Mr. and Mrs. Ahmed Amer

Detroit, Michigan 48207

Tuesday, October 28, 1986 - at about 10:50 a.m.

(Court, counsel and all parties present)

E X C E R P T

THE COURT: The Court after listening to the testimony of the various parties first of all will take jurisdiction of both children. What I'll do is I'll go under MCLA 712A 2, 1 and 2d. It is the neglect statute; emotional wellbeing section of one. Under 2, the neglect. I'm also going to go under cruelty and I'm also going to go under depravity and also that the child was abused.

I'll use the definition of abuse that is found in Child's Protection Law. That means a harm or threatened harm to a child's health or welfare by a person

responsible for that child's health or welfare which occurred through a non-accidental physical or mental injury. The Court will rule that this was not an accident. The Court's going to address some of the arguments of the defense attorney, first. He says that the doctors weren't there. Well, very rarely in a situation where somebody causes the death of another person do you have doctors sitting around watching what's happening. All the doctors can do is look at the physical evidence and try to interpret those for the Court. It's true that there was nobody there except for the people and these would be the people that killed the child. There's not going to be an admission. At least, there has been no admission that they in fact did do that. The defense attorney said that the Koran is not that important. I did not know what the Koran was before but I heard testimony of the father and after listening to him and the mother I believe it's obvious that the Koran

is an extremely important part of their religious philosophy. And, the purpose of it is to protect their children from any harm. Here, you have a situation where if you were ever going to rely on that type of belief it would be the time when the child was injured. According to the parents' testimony they had approximately twenty minutes between the time of the alleged injury and the time that the EMS got there. I believe in that situation innocent people are in a state of helplessness and if they're extremely religious they rely on their religious faith. That's one of the things I would think that a religious person would do. Except, I don't like to get religious in to this philosophy. But, the parents brought it in so I'm just addressing the issue.

The parents say they took Mohammed to the hospital for his medical condition. The record and the testimony indicates that it was after three months of chronic diarrhea which the Court will not find to be what a

rational person would do when you're taking care of somebody's medical needs. The defense attorney says that the medical doctors did not testify that was the exact cause of death. There were other hypotheses. The only two hypotheses I heard was that there was another child and possibly another child pushed the deceased. It was the testimony of the parents that there were no other children around. The only other hypotheses that I heard was that the child would have to be running backwards on a watersoaked floor and slide into the wall, which is contrary to the testimony that the child was in the bathtub. So, neither one of these possible hypotheses would make any sense whatsoever.

Attorney Breen is correct when she says you have to look at the history in this case. Here, you have a case from day one or minute one where the parents for some reason that identify the child as a child that's different than the other children. As

opposed to him "jumping from the stomach", apparently it was a C-section. They interpreted it to be a negative factor, apparently. The child did have feeding problems.

The child eventually, on September 4th of 1984 became a court ward based on abuse of the fractures. The Court took temporary jurisdiction of Samier at that time and pursuant to the Court's philosophy made efforts to try to reunite the family. It took approximately a year and a half. The maternal grandmother assisted the Court in the gradual transfer of the child back into the parental home. It was less than a month and a half later that Samier met his demise.

You have to look at the testimony of the other witnesses and compare that with the testimony of the parents,. Here, you have emergency room doctor at Oakwood Hospital who says the ambulance driver and nurse were told of a drowning victim. And, that there was a diaper and the child's hair

was dry. That does not equal a drowning situation. I believe the testimony of the emergency room doctor. He has no reason I think to fabricate a story. He said that the hair was dry. One of the things that pops out to the Court, and sometimes things do and I don't know why. But, in emergency situations like that normally you would not put a diaper and then rubber panties on a child if in fact the injury did happen in the bathtub. The hair was dry and given the time that the doctor understood that the injury happened, coupled together with the EMS testimony that there would not have been sufficient amount of time for the hair to dry.

Then, you have the testimony from the Dearborn Fire Department. The run was that the baby stopped breathing. The call was 10:16 and that they arrived on the scene at 10:20. That's approximately four minutes later. The baby was in the mother's arm and the baby was not breathing. The baby had

plastic pants on. Again, the Court thinks that's important. It was over a diaper with a blanket. Now, the testimony of the mother was that the baby was wrapped in a towel, not a blanket. Again, that may go to the actual place of the injury. But, the child was not wet and the hair looked dry. Again, given that the mother screamed, yelled to the father, the father immediately called the EMS, there would not have been time to dry the baby's hair.

The driver of the EMS unit said that the mother told him the baby was lying in the water face up. The baby was playing with another child in the bathroom. The mother heard the phone ringing and that was the information he received from the mother.

Of course, the mother's testimony is different. She says she did not say that. She says he did not understand or he must be lying as far as what he said that she said. But, there were no other children in the tub.

The registered nurse at Oakwood

Hospital: The mother at that time said that the child and his sister and another child were in the tub. The water was filling in the tub when the phone rang. Mother went to get the phone. She heard a thud. Child fell on his back and water was below his ear level. The mother's testimony is that's not what she told the nurse at that time. I believe these last two witnesses would have absolutely no reason to fabricate their stories. The mother's testimony is different. That the other two children were not in the tub at the time.

The pathologist, certified medical expert in the field of forensic pathology said the child was about 33 inches and 25 pounds. The autopsy was performed on November 23rd, 1985. There was a fracture of the skull and cause of death was from head injuries. The fracture occurred by the head being hit by high velocity of speed, injuring the back of the head. When questioned if it was a slip in the bathtub that would give

this sufficient speed to this type of injury, he answered in the negative. If the parent dropped the child would that be sufficient? The doctor answered in the negative. In order for the type of injury, the extent of the injury that was caused to Samier he would have to fall from two or three stories. He said with that type of injury the child would have to be taken and swung to cause this type of injury. That's the speed and velocity that would be necessary to cause the type and extent of the fracture as he indicated. He said that the cause of the injury was one impact caused on a flat surface.

The director of pediatric intensive care at Children's Hospital noted also besides basically paralleling the testimony of the medical examiner that there was retinal hemorrhaging. He said that the history that's given by the parents does not cause the type of injury that we had in this situation. He said it's the type of injury that is indicative of severe force to the

head; direct impact similar to if the baby had fallen from two stories. He said that he had retinal hemorrhaging and a fracture. He said it was important because they could have happened at the same time or they could have happened at two different times.

We have the testimony of Ronald Bunse, Dearborn Police Department. He talked to the mother and the father. The mother he talked to at 1:20. The father he talked to at about 8:30 that evening. Mother said that she found the child in the tub with his face covered with water. Mother refutes that testimony and says it's not true. Again, the Court believes Officer Bunse. I can't think of any reason he would want to fabricate the story. He has no interest in the case. He's just doing his job. That the mother found the child in the tub with face covered with water. That the child said, "Oh wad" and pointed to the wall. The mother denies this testimony. Again, there's no reason for the police officer to make this up. When they

interviewed the father, the father's story pretty much paralleled the mother's, except there was no testimony regarding the wall. The officer also testified that the mother said that the child was submerged in the tub except for his eyes and mouth.

Patricia Lawson, petitioner for Protective Services said that the parents said that the child Samier was a difficult child with problems since birth. The child was made a court ward because of fractures when the child was four months old.

Testimony from Martha Stanislovaites, registered nurse from Botsford was that Mohammed Ali was in Botsford for feeding problems. There were two different charts. One said that the parents were feeding the child improperly and later the parents said they would follow instructions.

The parents' second witness, that would be Ms. Chahine was offered at Oakwood as an interpreter. It's important because

she was one of the respondents' witnesses. She said first of all the mother did not have any problem understanding English and neither did the father. And, they could both communicate well. The Court in observing the demeanor and the responses to the questions would also indicate that there's no problem in understanding or communicating English. But, the mother at that time said that the water was running in the tub and that the children -- the two boys for sure were in the tub when the water was running and the phone range. That's consistent with the testimony that's given by the earlier witnesses put on by the State and inconsistent with the testimony as given by the mother.

There's inconsistencies and differences in testimony as far as who was the caretaker of the children. But, on a whole, their stories pretty much paralleled each other. The Court had an opportunity to observe the witnesses, observe the demeanor and tried to pick up any subtleties that I

think are important to myself. One of the things that I found important was the father when he was testifying. His emotions pretty much fit what I would consider appropriate during the time of his testimony that would parallel injuries of the child. The mother, while she was giving testimony up until she started to actually give testimony of how the injury occurred or the telephone conversation, I thought her emotions were somewhat forced. When she gave testimony of how the injuries occurred I did not think her emotions were consistent with what had transpired at the time. Later on when she testified as to when Samier died her emotions -- again, I'm talking about basically her tears were appropriate and her demeanor also changed. That when you get to the critical area of what happened then testimony is relied on by rote. We heard her orchestrate what would sound best to the Court, as opposed to what really happened.

Mr. Ladd is correct. We don't know

who did it. It was either the mother of the father. I have no doubt in my mind it was one of the two that did it. But, based on the child's history with the court, the other parent should have been in a situation to protect that child from the injuries from the parent that caused the death of the child.

The Court will further point out two other things that I think are important. First is that this mysterious phantom phone caller never called back. If I called somebody either on a business line or on a personal matter and the person lifted up the phone, said, "hello and then screamed I would have done one of two things. I would have called back to identify myself and ask what's happened. Or, if it was a business phone call I would have done the same thing. I would have been concerned. I think an average person, not merely family or business would have called back. So, as far as the parents having no testimony or nobody to offer as to who was the phantom phone caller,

I think is consistent with the story not being factual.

The mother testified that there was a sliding door on the bathtub and that sliding door would have tracks. If a child was standing in the bathtub that would not be a slippery bathtub because of these tracks which would take away from the story of the child slipping. If the child was in the bathtub and slipped, that would be inconsistent because the mother's testimony was that there was a bathmat in the tub to prevent a slipping situation.

So, if you take all of the testimony put together and you just use common sense this is a situation where one of these two people is responsible for not protecting that child. Under the cases as cited by the Prosecutor the case cited by Attorney Ladd, the Court will make the other two children wards of the court. The Court believes that these children definitely need protection from both of these parents. These

cases are In Re: La Flure, In Re: Ditrich and In Re: Futch.

Anybody dissatisfied with this opinion has 21 days to appeal. If they cannot afford an attorney, an attorney will be provided for them. If they cannot afford a transcript, it will be provided for them.

I am making both of these children wards, temporary wards of the court at this time.

Where are the children at?

MS. BREEN: In foster care, Your Honor.

THE COURT: The children will remain in foster care until disposition. We'll set a disposition date.

I know Mr. Goldberg was not present yesterday and I'll assess one hundred dollars.

If you're dissatisfied with that opinion you also have 21 days to appeal. That hundred dollars should be paid within 10 days.

MR. GOLDBERG: Your Honor, I never had an opportunity to address that. Can I do that now?

THE COURT: No, set it up. I'll let you address it at another time.

The earliest I can put this in for disposition would have to be the 18th of December. Be here at 8:30.

MR. GOLDBERG: Your Honor, I have another trial on that date. Is Wednesday, the 17th possible?

THE COURT: No, but how about the 19th? Where's your trial at?

MR. GOLDBERG: In Highland Park.

THE COURT: Off the record.

(Whereupon, discussion was held off the record.)

THE COURT: I could fit you in at 1:30 on the 15th. I would ask the worker to make some type of recommendation in writing and present that at least two or three days before so that the other attorneys can have an opportunity to look it over and see if

they're going to have something to counter indicate that.

What I'll do is I'll set it for 1:30 on the 15th. I'm only going to be able to give you about an hour. I have a jury trial that afternoon.

MR. GOLDBERG: That'll be fine.

MS. BREEN: Your Honor, on behalf of the petitioner we would ask at this time for an updated clinic referral. We believe it would be very appropriate in this case to determine where placement should be for these children.

THE COURT: I'll order a Clinic. If it's contested we'll set another date.

MS. BREEN: Thank you, Your Honor.

(Whereupon, at 11:10 a.m. court was adjourned.)

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

I certify that this "EXCERPT OF THE PROCEEDINGS", consisting of 13 pages, is a complete, true, and correct transcript of the proceedings taken in this case on October 28, 1986.

_____

Date GRETHEL R. BROWN
CSR1127

APPENDIX H

STATE OF MICHIGAN
IN PROBATE COURT FOR
THE COUNTY OF WAYNE
JUVENILE DIVISION

REPORT AND RECOMMENDATION
OF REFEREE

In the Matter of AMER: Samier No. 241,317

A child(ren) alleged to come within the Provisions of Act 54, Extra Session of 1944 as amended

I, the undersigned, a duly appointed Probation Officer of this Court, acting as referee in accordance with the Provisions of Act 54, Extra Session of 1944 as amended, of the State of Michigan, hereby certify and

report that I have this day taken the testimony of the witnesses and statements of the parties in interest in the above matter, and no objection was made by the parties in interest to the taking of such testimony and statements; that the testimony and statements so taken show that: Child(ren) is(are) under the age of nineteen years;

Samier, born 11/18/83

The matter is before the Court today, September 4, 1984, for continued adjudication on a Petition filed April 2, 1984, by Steven Rose of the Wayne County Department of Social Services.

Present in Court today are: Prosecutor Pat Battersby, for the Department; Steven Rose, petitioner: Cynthia Falkenstein for the baby; retained attorney, Gary Eisenberg, for the mother and father, Rehab and Ahmed Amer. Both parents are present, as well as Ellen Rumman, Tula Michalakis and Mary Lane, all three of the International Institute and

Betty Glover of the Court's Family Treatment Unit.

The Court conducted Pre-trial April 16, 1984. The matter was continued at the request of counsel for further Pre-trial May 10, 1984. On May 10, 1984, the Court received four exhibits that were joint exhibits of the Department, child and parents, being Exhibit #1, a letter from Dr. Sheldon A. Schore, D.O. to Gary Eisenberg, dated April 4, 1984, Exhibit #2, the medical records of Samier Amer from Dr. Sheldon Schore, Exhibit #3, an Affidavit signed by Wafaa Bazzi, May 7, 1984, and Exhibit #4, being the medical records of Samier Amer from Oakwood Hospital dated April 24, 1984.

The Court took sworn testimony June 12th from Paula Fisher, Public Health Nurse; partial testimony from petitioner, Stevevn Rose, from Dr. Carolyn Johnson and from Dr. Sheldon Schore. The Court heard sworn testimony July

31st from Dr. David Osher and from Dr. A. Suarez and completed testimony from Steven Rose. The Court also received with limitation, the medical x-rays of the child, Samier. The Court heard partial sworn testimony from the mother, Rehab Amer. The Court, today, heard sworn testimony from the mother and from Ellen Rumman. The Court also heard dispositional testimony from Dr. Ruth Day of the Clinic for Child Study.

Based on the testimony in the record as a whole, the Court makes the following findings of fact for purposes of adjudication and partial disposition:

FINDINGS OF FACT

(1). Samier Amer was born November 18, 1983, at Oakwood Hospital. He is a resident of Wayne County, residing with his parents, Ahmed and Rehab Amer, at the time of Court intervention.

(2). He has a twin sister, Suehier. He has an older brother, Mohommad Amer, born 12/11/82.

(3). The child was detained at Oakwood Hospital as a result of a 3200 filed by hospital personnel, involving bites, as well as numerous fractures.

(4). Based on the testimony of Paula Fisher, Public Health Nurse, the Court concludes the child was difficult to handle with the family switching formulas. The child stiffened and screamed when changed by mother.

(5). Based on the testimony of Steven Rose, the Court concludes that the Department became involved as a result of a referral from Oakwood Hospital. The child had bite marks on the left side of his torso, the back of his neck and the bottom of his feet. The Department of

Social Services filed a Petition due to the unexplained fractures and bites. The Department never did investigate the identified babysitter of Wafaa Bazzi nor the father alone, nor others in potential contact with the child in the care of the relatives, Mr. and Mrs. Ayache, also of Dearborn. Department investigation shows the family to be residing in a fine, clean, suitable home and shows the family to be close knit, with bonding and no evidence of marital discord.

(6). Based on the testimony of Dr. Carolyn Johnson, who is qualified as an expert in Pediatrics by her educational experience, the Court finds that Samier is a much different child than his siblings. The doctor initially assumed the child had a milk allergy and, therefore, changed the child's formulas. The doctor did arrange for the child to be admitted to Oakwood as a result of the mother's continued complaints

regarding the child's feeding problems. The doctor observed that the child had a fracture in the left femur, the left tibia and the right humerus. The doctor conducted a number of tests to rule out bone problems. There is no medical reason for the child to have a large number of fractures. The doctor found the child to be a very stiff baby who is hard to manipulate. This trait is called being hypotonic. A normal baby is more floppy, like jello.

The doctor, based on her observations and testing concluded that there was needed a substantial height or quire an acceleration motion in order to break the bone as the child is a very small mass. The doctor, based on her experience, found that a child of his age would scream when touched as a result of these injuries and

there would be swelling for several days that would be observable to others about the child. The doctor found the child to be very attentive to his mother and the child definitely preferred his mother to any other person.

(7). Based on the testimony of Dr. Sheldon Schore, who was qualified as a result of his practice as a D.O. since 1966, the Court finds that the family had regular contact with Dr. Schore from December 5, 1983, through February 1984. The child was brought in for treatment on a regular basis. The family did bring the child to his attention January 20, 1984, when the child's right arm was limp. Dr. Schore referred the child to an orthopedic specialist, Dr. Mandell. The doctor did not file a 3200. The doctor noted the child did have continuing feeding problems and the mother

preferred finally to go back to a specialist and to have her child at Oakwood Hospital.

(8). Dr. A. Suarez, per stipulation of counsel, qualified as a Board certified Orthopedic surgeon. The doctor observed the child, Samier, in the hospital, as well as reviewed the March 13th x-rays. The doctor based on his expertise found five areas of fractures, being the right humerus which is the upper right arm; the left upper tibia, which is the area between the knee and the ankle, the distal and middle left femur which is the area between the head and the knee and the left clavicle which is the collarbone. The doctor, based on his experience, concluded it to be likely child abuse. The doctor, based on his physical and his review of x-rays, found that fractures, when fresh, result in pain and swelling and then go into a

lumpy stage. The left clavicle injury was at the lumpy stage when the child was at the hospital. The doctor, based on his experience, found the left clavicle probably to be the oldest fracture more than one to two weeks of age. The child had no pain in any other part for previous fractures were evidenced. Based on the doctor's expert testimony, the Court concluded that the child or anyone close to the child would or should notice the injury to the child. The doctor would place, at the outside, the injuries at the age of 3 weeks, at most, more likely 1-2 weeks old.

(9). Based on the testimony of Dr. David Osher who was qualified as an expert radiologist by counsel and who took the x-rays of the child and who wrote a report for the medical records March 14, 1984, the Court concludes that there was

extensive periosteal new bone formation. The observations of the new bone formation in conjunction with the observation of the healing fractures leads the Court to find that these fractures did occur and are of differing ages.

(10). Based on the testimony of Conna Sabo who is qualified as an expert medical social worker based on her education and 10 years experience, the Court finds that the hospital filed one 3200 initially on the observation of the bites on the child's body and then a second 3200 as a result of the discovery of the fractures. Ms. Sabo confirmed the mother continues to be concerned over her child from birth and that she claimed the child jumped out of her during the C-section. Ms. Sabo never interviewed the father

regarding any explanation. Ms. Sabo acknowledged that the mother is very concerned for her baby. Through the efforts of Ms. Sabo, the siblings were examined and they had no signs of physical abuse. All three children were up-to-date on their shots and physicals. The mother did not, initially provide the name of the babysitter to the hospital as she had sworn on the Koran not to reveal the name of the babysitter. The mother subsequently revealed the babysitter's name.

(11). The mother, Rehab Amer, testified that her child, Samier, was always different. That he jumped from her stomach and screamed on the second day. The mother wondered why the child cried all the time. The mother took her children to Dr.

Schore and to other persons. She even had to force feed her baby with a dropper in order to get him to eat. The mother tried various kinds of formulas and feedings and finally resorted to asking that child be put into the hospital. The mother is willing to work, and has been willing to work with Ms. Rumman of the International Institute.

The mother was responsible for sole care of the child. She did not have her husband watch the baby alone. The mother knows about the fractures, but has no explanation for the fractures. The mother's position is that she loves her baby and why would she keep talking to a doctor if she had harmed her child.

(12). Ellen Rumman, a licensed master

social worker with the International Institute specializes in providing counselling in the Arab community. Ms. Rumman has visited the mother and baby and relatives in the family home. She found there to be good respect between the mother and father with a strong family network. She notes that Mrs. Amer wishes to follow her own mother's footsteps as a good mother. Mrs. Amer's mother raised 14 children. Mrs. Rumman saw a warm relationship between the mother and the child, Samier. The mother also responded appropriately to her other children. Mrs. Rumman acknowledged that discipline is part of the cultural background and that hitting is a sign of caring within the Amers ethnic group.

(13). Dr. Ruth Day was qualified as an

expert in psychiatry based on her education and experience and she saw the family on two occasions. Dr. Day's evaluation was somewhat limited due to the fact that not all family members are fluent in English. Mr. Amer provided some translation for the aunt, who is the child's caretaker. Dr. Day acknowledged that there was something wrong with the child, Samier, which would have been caught by the various doctors who viewed the child. Dr. Day found the mother to be carrying the very heavy burden raising three children under the age of one year, having sole responsibility and having no relief with any babysitters. The child was comfortable in the care and custody of his father. The child, Mohammed, is an independent child and has no unusual signs in

his behavior. Dr. Day believes it is necessary to have an interpreter to assist the family in preparing a final treatment plan. Dr. Day concludes that the mother, more likely, had a particular fixation on this particular child and the doctor acknowledged that the mother was substantially overworked. Dr. Day recommends against return of the child at this time, to the care of the parents.

CONCLUSIONS OF LAW

(1). The Court has jurisdiction over the subject matter and the parties.

(2). The allegations made in the Petition filed April 2, 1984, pursuant to MCL 712A.2(b) have been substantiated, and the parents wish an adjournment to present further dispositional testimony.

THEREFORE, IT IS RECOMMENDED THAT Samier Amer be made a temporary Court ward, continued in the care of his aunt, Mrs. Ayach under the temporary placement Order of shelter care or suitable relative placement under the Family Treatment Unit supervision, with the case continued to October 31, 1984, at 9:00 a.m., at the parents' request for further dispositional testimony.

APPENDIX I

Michigan Supreme Court

Lansing, Michigan

ORDER

Dorothy Comstock Riley
Entered: July 31, 1990
Chief Justice

89463 & (93)

In the Matter of MOHAMMED ALI AMER, SUEHIER AHMED AMER and ZINABE AHMED AMER, Minors

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DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

SC: 89463
COA: 114910
LC: 241-317

REHAB AMER and AHMED AMER,

Respondents-Appellants.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for stay is DENIED as moot.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

July 31, 1990
Deputy Clerk

APPENDIX J

Michigan Supreme Court

Lansing, Michigan

ORDER

Dorothy Comstock Riley
Entered: September 28, 1990
Chief Justice

89463(99)

In the Matter of MOHAMMED ALI AMER, SUEHIER AHMED AMER and ZINABE AHMED AMER, Minors

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DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

SC: 89463
COA: 114910
LC: 241-317

REHAB AMER and AHMED AMER,

Respondents-Appellants.

On order of the Court, the motion for reconsideration of this Court's order of July 31, 1990 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

September 28, 1990

Clerk

APPENDIX K

The Children's Home Of

JUDSON CENTER

NATURAL PARENT/AGENCY AGREEMENT

Child's Name: _____ Date of Placement _____
Parents:

_____

_____

_____

I,

_____

do agree for my child

_____

to be placed in Foster Care through Judson Center. I do further agree to:

1. Be an active member of the treatment team by attending quarterly case conferences and assisting in treatment planning.

2. Be supportive of the foster parents and caseworkers in their efforts to work with my child.

3. Work with the caseworker on establishing goals for our family and working hard to achieve these goals, so that a more

permanent placement for our child will be possible.

4. Arrange for visits with our child with the caseworkers and follow through with these visits as planned.

5. Be supportive of our child while he/she is in placement by maintaining contact and interest in his/her life.

6. To obtain counseling regarding parenting skills and grief therapy.

7. To provide Judson Center documentation of progress in said counseling on a bi-monthly basis if receiving services from an agency other than Judson Center.

_____ _____

Parent Date

_____ _____

Parent Date

_____ _____

Agency Foster Care Caseworker Date

APPENDIX L

The Children's Home Of
JUDSON CENTER

NATURAL PARENT/AGENCY AGREEMENT

Child's Name: _____ Date of Placement _____

Parents:

_____

_____

We,

_____,

have stated an interest in regaining care and custody of our children,

_____,

and in order to work toward that goal we agree to the following activities:

1. Attend quarterly case conferences to plan goals, help assess progress and exchange information.

2. Visit on a weekly, supervised basis with our children.

3. Meet with the caseworker on a weekly basis during supervised visits.

4. To continue to attend counseling to resolve grief and other feelings surround the death of our son, Samier and regarding appropriate parenting skills.

5. To attend counseling to acknowledge and accept responsibility for the severe abuse inflicted on Samier Amer, now deceased.

6. To provide Judson Center releases and documentation of purpose progress and attendance at said counseling on a completed, bi-monthly basis if receiving services from an agency other than Judson Center.

We understand that the goals we set and the progress we make will be used in reports to the Court. We are also aware that complete fulfillment of this agreement does not guarantee (immediate) return of our children, but will be an important factor in the Judson Center recommendation to the Court. We also understand that failure to meet the terms of this agreement may result in a petition to the Court requesting termination of parental rights to our children.

The Judson Center worker, acting on behalf of the Department of Social Services, agrees to assist the client in his/her efforts to regain custody of his/her children and in order to work toward that goal agree to the following:

1. Notify the parent(s) regarding quarterly case conferences.

2. Arrange visits on a weekly supervised

visits between the children and parents.

3. Meet with the parents on a weekly basis during supervised visits with their children.

4. To receive and review by-monthly counseling reports from the agency/agencies where the parents are involved in therapy.

5. This caseworker will supervise weekly visits between the parents and the children and if necessary will engage in limit setting with regard to parental concerns/issues.

The above agreement is to insure the proper care for the children and planning for the children and family.

It is agreed that this agreement will remain in effect until jointly amended or if new

circumstances and/or information warrants. It will be reviewed at least quarterly to determine progress toward meeting the above goals.

Parent	Date
Parent	Date
Agency Foster Care Caseworker	Date

Appendix M

At the preliminary examination of a criminal proceeding against Mrs. Amer before Judge Joseph Burtell, Dr. Suwait, who performed the autopsy on the body of Samier was questioned on direct examination as to his observations. As for external trauma he answered that there was a small bruise on the left side of the cheek. As for internal trauma he testified:

> When I did examine the head, I found that, you know, there was a bruise on the back of the head, about this area (pointing

to the back of his head) that was not seen externally.

(THE COURT): It was not seen externally?

(THE WITNESS): That's correct. When you open up the scalp, you know, there's a big bruise there and underneath the bruise there was a fracture of the skull . . . ."

The witness continued:

Yes. And when I examined the brain, I found that the brain, underneath that, is bruised, contused, and also there was a contusion of the brain on the front half, and there is a little bit bleeding inside the head on the front part of the head, and that were all the injury I have seen in this particular case. (T 2/7/86, p. 15-16)and see(a-5)

Counsel has obtained the transcript of the evidence at the criminal trial of Mrs. Rehab Amer, found innocent of killing Samier. As a matter of public record this Court should consider taking judicial notice of it.

It is summarized below and the transcript is submitted herewith.

The first portion of the trial was held on August 7, 1986.

James A. Caputo was a firefighter for the City of Dearborn and drove an ambulance to the Amer home on the day Ssamaier died. He testified that Mrs. Amer never indicated that she thought the child had drowned or feared that he had drowned. (T.15) The fire officer however reported a possible drowning because the mother had indicated that she found Samier face up in the bathtub. He characterized his hypothesis as an "assumption". (T.18)

The next witness was a Bruce Darr who was a corporal with Dearborn Police Department. (T.20) He testified that he questioned Mrs. Amer who said that the children were in the bathtub, the phone rang, she answered it, heard a loud thump, ran back to the bathtub and found Samier lying face up in about four inches of water. (T.23-24) Darr also testified that Mrs. Amer said that she gave Samier CPR, that he started

breathing again, she dried him off and dressed him and asked her husband to call the fire department.(T.26) She apparently notified several other family members who came over to the Amer home. (T.27)

In response to Officer Darr's questions Mrs. Amer denied being responsible for the injuries to the child. (T.32) The two doctors with whom Officer Darr spoke with were Dr. Webley and Dr.Derum. (T.35)

Officer Darr indicated that at the time he had some doubt about the truth of what the Amer's were telling him. (T.39) Officer Darr made no follow-up investigation into the circumstances surrounding the Amer household at the time of the death of Samier.(T.41) And did not scrutinize the condition of the bathroom or the bathtub. (T.41) In fact he did nothing to investigate the condition of the house. (T.41.42)

The trial continued on August 11th, 1986 with the testimony of Dr. Ashok Sarmaik. Dr. Sarmaik was the Director of Intensive

Care at Children's Hospital and had been licensed to practice medicine and had gone to medical school in Bombay, India. (T.3-4) He was not a specialist in pathology. (T.5) He was not an expert in determining causes of death by unnatural means. (T.5-6)

The Doctor testified that Samier arrived at Children's Hospital on November 21st, 1985 at about 11:00 o'clock in the morning.T.6-7). A discussion ensued about the qualifications of this doctor to testify as to a possible cause and finally the court indicated that he could be an expert in a "hypothetical". (T.13) He testified that he had seen head injuries of this type of children falling from second story windows.(T.15);that the type of injury that he observed in Samier was not consistent with the child falling in a bathtub.(T.16) (It should be noted he did not testify that the type of injury could not occur as a result of falling in a bathtub under circumstances where the child had a history of unexplained fractures and possibly

of bone disease. Nor did he explain how it was that the other indicia of an impact which would be analogous to falling from a second story window were not present in this instance.)

This doctor had not done an autopsy. (T.17) and had obtained a history of this incident from a medical resident whose name was Ellen Christy.(T.18) Of course the doctor could not speculate as to who would have been responsible for the injury to Samier. (T.22) The essence of the doctor's testimony was that this injury was not consistent with the fall in the bathtub in the usual case. Nor could he testify whether the injury was caused by a person out of an angry, upset or raging reaction or whether it was a cool intended action. (T.24)

Putting aside the history as reported to the doctor by others he could not rule out a severe accident as being the cause of the injury. (T.25).

Question: OK,
finally Doctor, just once

again to clarify a point: you can only rule out when Mr. Wright asked you about an accident causing these injuries, an every day type of child accident, however you cannot rule out a severe accident as being the cause in this particular case. Is that correct?

Answer: Without a history, I cannot." Page 32.

The next witness was Dr. James Webley. Dr. Webley was the emergency room physician at Oakwood Hospital and was on duty November 21st, 1985. He was a certified emergency physician without any other specialty. It was unclear to the doctor what had happened and so he asked the nurse to get the history. (T.40) The child was not bleeding from anywhere. No bleeding at the back of the head and nothing but a bruise on the left cheek which was not very well developed.(T.42) The doctor testified that the story did not make sense to him.(T.42) This doctor thought that the history was of a

drowning but he did not indicate where he obtained that information. (T.54) The doctor never talked directly to the parents.(T.46) He could not determine the time when the child's difficulties began. (T.48) but he did say that the difficulty could have been as much as 3 hours prior to him seeing the child. Dr. Webley filed a child abuse report but he testified that he would file such a report even with the slightest suspicion that child abuse had occurred.(T.52-53)

The next witness was Dr. Linda Derhum. She was the house physician at Oakwood Hospital. She testified that looking through the hair, down by the scalp, it was a bit damp.(T.55) The witness had no question but that the child's hair was damp. (T.57) She testified that she told the police officers this.((T.58)

Paul Monberg was a firefighter for the city of Dearborn. He responded to the emergency call of the baby not

breathing.(T.64) He entered the Amer house at about 10:20 a.m. on November 21st, 1985. When he arrived at the house the child was in the mother's arms. (T.65.66) He testified that the child was dry; (T.67) and that the child was not bleeding from anyplace and not from the back of the head.(T.68) He did not himself go into the bathroom to see what the bathroom was like. He assumed it was a drowning.(T.70) When Monberg arrived at the Amer house there were many people there, at least 6.(T.71-72) He could not say whether the baby had been in water or not.(T. 72) He didn't run his fingers through the baby's hair and really wasn't paying attention to whether the baby was wet or dry.(T.73) When asked whether his partner had said that the mother or the father had indicated that the child had drowned the answer was "I assumed that". T.76)

Ahmed Amer, the husband of the defendant Rehab Amer was called as a witness by the state. He testified he worked at Ford Motor

Company and did work on November 20, 1985. (T.80), and that he went to sleep at his usual time, about 3:00 o'clock in the morning after coming home from work. He looked in at his children and they were fine.

He awoke at about 8:30 or nine o'clock the next morning. The phone had rung and Mrs. Amer went to pick it up so as not to wake him.(T.87) He testified that a rule in the home was that his wife would make every effort to make sure the phone doesn't ring in the morning when he was sleeping. (T.109-110) That would be on November 21st. He awoke to his wife's scream. (T.82) He testified that he saw his wife trying to revive Samier who had no clothes on.(T.84) The other children were half way dressed in diapers and towel.(T.84-85) They both tried to give the child mouth to mouth resuscitation.

He testified that he had no difficulty with Samier except that Samier was sick all the time, (T.89) and that the sickness caused him to take the child to seek medical

attention; (T.91) that Samier was sick all the time in contrast to the other children, such as difficulty in feeding (T.101) but that this posed no difficulty for his wife or himself in the interaction of themselves with the child. (T.102) He testified that his wife was generally a soft spoken person(T.106) and that she had never told him that she hurt or assaulted the child. (T.116)

The next witness was Dr. Sawait Kanluen. Dr. Kanluen testified that he was employed at the Wayne County Medical Examiner as an assistant medical examiner for Wayne County and he was a board certified in pathology as well as anatomy and forensic pathology.(T.118) He was a graduate of the medical school in Bangkok, Thailand, in 1966 and testified in court once or twice every week.(T.120) As to the autopsy of Samier:

> "When I examined the head I found that there was a bruise or contusion on the back of his head and the skull underneath was broken, a so called a stellate (sic) fracture.

That means that there is a center area around the fracture radiated from that point, a stellate fracture."

"Question: Let me stop you right there. You indicated that there was a bruise on the back of the head.

Answer: Yes.

Question: Was that visible by looking externally at the scalp?

Answer: No.

Question: How did you determine that there was a bruise on the back of the head?

Answer: Because we cut the skull open, make an incision and we take the skull back and that when you know, I begin to see that bruise.

Question: So there was a bruise on the inside of the skull?

Answer: That's right. He also, after opening the skull, examined the brain."

"And the brain was contused or bruised, there was bruise in the front part of the brain. And there was also

hemorrhaging in the brain." (T.122-123)

So far as any other observations, Mr. Kuwait said:

> "Except the injury to the head, I did not see any other thing unusual." Page 124.
>
> "Question: So there was no other injuries to this child other than the injury to the head, this bruising on the inside of the scalp, the stellate fracture to the back of the head and the bruising in the front of the brain?"
>
> Answer: Right." (T.124)

He answered in response to the question as to the cause of death as follows:

> "The cause of death was due to his injuries." (T.124)

And he said in response to the question as to what caused the injury:

> "The extent of the injury and the pattern of injury, both on the skull and the bruise in the brain, indicated that, you know, the injury happened when the head was moving at a great speed and velocity. And it hit a big object." (T.124)

He testified that it would have been a blunt object.(T.125)

> "Question: So basically you are saying that this blunt object when the head was moving at a great rate of speed hit a fixed object like a wall?
>
> Answer: Like a wall, like a floor or any flat surface space. But the object is stationery and the head was moving." (T.125)

He testified that it was possible that someone swung the child and the head hit the wall. (T.125) The witness testified that he classified this as a homicide. (T.127) He said he reached his conclusion because this could not happen from an ordinary fall in the bathtub.

> "If it is due to a fall, it has to be a fall from a great height like 2, 3, 4 stories and fell--the back of the head down." (T,128)
>
> "If that would happen, then--you know--the child would have some outer injuries, too." Page 128.

(There were none, however and the logical conclusion can only be that such force did not cause the injury to Samier.) A complete account of the medical examiner's report is contained on Page 124 through 129 of the transcript.

The doctor testified on cross examination that he could not tell that the child's skull was fractured until the skull was opened up.(T.133) Dr. Kuwait testified that the child's head moved at a great rate of speed and hit a fixed object. But he also then testified on cross examination that it could have been a wall it could have been the floor it could have been anything and it could have been the top of the bathtub.(T.134); or the sink or the tile floor. The doctor testified that he couldn't tell how far the child's head was from the object that it hit;(T.136) couldn't tell if the child was ten feet from an object which the child hit or two feet.(T.136) but that a

great rate of speed was necessary to cause this type of injury. (T.137) that in order to swing the child's head so that its head would hit a fixed object the person swinging the child would have to have an extreme amount of strength.(T.137) Dr. Kuwait did not rule out the possibility that the injury could have been caused by the child himself flipping over in the bathroom.(T.141) In the event that the child ran at full speed that he could not rule out the possibility that the child slipped and fell backwards in the bathroom.(T.145-146)

> "Question: OK. And if the child was running at a great rate of speed, falls back and hits his head and rolls or slips into the tub would that be consistent where that eye bruise came from-- that face bruise came from? That's a possibility as well?
>
> Answer: Well, anything is possible.
>
> Question: All right, that is exactly my point."

"Question: You cannot rule out that the child was thrown from a foot of five feet four inches to six feet in height by someone slipping and projecting them toward either a bathtub or tile or wall: you can't rule that out either, can you?

Answer: I cannot rule it out, and like I said--" (T.149-150)

Officer Bunce was a Detective Sergeant with the Dearborn Police . (T.163) He found nothing unusual about the bathroom or bathtub.(T.163)There is no testimony in the record that any other police officer ever did any further investigative work in the bathroom or in the Amer home to determine if there was any evidence of blood or marks or any indication of foul play. This in itself would lead to the inference that there were no such evidence.

He testified that Mrs. Amer said that she thought the baby had struck the wall. (T.168) The detective's report apparently did not indicate that Mrs. Amer ever said to

him that the baby might have drowned. (T.172) She did indicate that he might have slipped and hit the wall. (T.169) He indicated the sentence given by Mr. and Mrs. Amer are essentially the same. (T.174) Apparently the detective had no suspicion about the versions that the Amers had given him, but it was his job to be suspicious and he relied on the doctor's report that he didn't feel that the injuries were consistent with what he had heard so he went back to check the bathroom and so forth and he found nothing. (T.176)

So much for the evidence at the criminal trial.

Appendix N

Litigation Chronology

03/24/84	Samier Amer made temporary ward of the Court.
11/24/85	Suehier and Mohammed Ali placed in foster care.
12/02/85	Probable cause hearing, Referee S. Weherman.
12/13/85	Pre-trial. Referee Drake.
12/17/85	Motion for placement in home of relative.

02/27/86 Neglect Petition.

06/24/86 Parent-Agency Agreement.

08/13/86 Rehab Amer found in Wayne County Circuit Court not guilty in death of Samier.

10/28/86 Decision of Martin T. Maher placing Mohammed Ali and Suehier within the jurisdiction of the Probate Court.

12/02/86 Motion to replace attorney for children.

12/02/86 Motion for dismissal of petition.

12/11/86 Neglect petition re: Zinabe Amer.

12/15/86 Dispositional Hearing before Judge Maher.

12/15/86 Order of Judge Martin T. Maher that Mohammed Ali Suehier and Zinabe are within the jurisdiction of the Court.

03/05/87 Motion to remove William E. Ladd as guardian ad litem on the grounds of his racist conduct and beliefs.

03/05/87 Motion to set guidelines re: "admission of responsibility".

03/09/87 Motion to reunite minor children with parents forthwith.

5,7,8,29/87 Statutory Hearing held with Judge Barsamian.

05/29/87 Order of Judge Barsamian after statutory hearing continuing foster care and requiring confession of guilt.

05/29/87 Order barring visitation between

Rehab Amer and Mohammed Ali Amer.

06/03/87 Motion for Reconsideration of Order re: visitation of Minor Child with natural mother.

06/19/87 Application for leave to appeal from statutory review by Judge Barsamian of 05/29/87.

12/11/87 Petition for Rehearing for permanent termination.

12/23/87 Petition for Neutral Psychological Conjoint evaluation.

01/ /88 - 01/09/89 Termination and Statutory Hearing held by Judge Barsamian.

01/09/89 Order of Termination.

01/30/89 Claim of Appeal filed.

02/06/89 Motion for stay of proceedings permitting visitation pending appeal denied by Probate Court.

03/07/89 Leave to Appeal to the Court of Appeals re: visitation pending appeal denied.

05/31/89 Leave to Appeal to Supreme Court re: visitation pending appeal denied.

6/12/90 Court of Appeals opinion.

7/31/90 Supreme Court denial of stay and denial of application for leave to appeal.

9/28/90 Supreme Court of Michigan denial of Motion for reconsideration

1. The essence of such fundamental unfairness lies not in the mere weakness of one party's position, but in the use of a procedure that produces the party's disadvantage, or that allows an opponent to benefit from his own improper conduct producing the disadvantage. State v Denney, 536 A.2d 1242, 1248-1249 (1987)

2. Where a child remains in foster care in the temporary custody of the court following the initial hearing provided by Section 19, the court may make a final determination and order placing the child in the permanent custody of the court, if it finds any of the following:

* * * *

(e) The parent or guardian is unable to provide a fit home for the child by reason of neglect.

(f) The child has been in foster care in the temporary custody of the court on the basis of a neglect petition for a period of at least two years and upon rehearing the parents fail to establish a reasonable probability that they will be able to re-establish a proper home for the child within the following 12 months.

3. ..., when the court intervenes relative to the other children, the court cannot just ignore that which has transpired in the past. Perhaps if the case had initially come to the court as the death, the killing, that might have been more plausible; or, you know, we all

want to believe that parents can't do these things to their children. But in this case you had a severe injury, unexplained, cannot be caused by the child, and then a death. That could not have been inflicted by the child or the other children in the family. (T 1/9/89 p 1728)

4. Mr. and Mrs. Amer present as 'highly ritualistic individuals'.Specifically, the fact that each child is never, by this PO's observation, without the small Holy Koran pinned on the inside of their tee-shirts/undershirts.On a home visit, Mr. Amer stated that the Koran on the children's person was <u>absolutely necessary</u>. This PO did not comment as this information was not new to her understanding of the Arabic culture. (Case History 1/13/86, p 10)

5. Except as provided herein, the juvenile division of the probate court shall have:...
(b) Jurisdiction in proceedings concerning any child under 17 years of age found within the county
(1) Whose parent or other person legally responsible for the care and maintenance of such child, when able to do so, neglects or refuses medical, surgical or other care necessary for his health, morals or well being,...or who is otherwise without proper custody or guardianship; or
(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent, guardian or other custodia, is an unfit place for such child to live in, ...

6. The court in all cases involving custody shall state in the order for disposition or any supplemental order of disposition whether the child is placed in the temporary or permanent custody of the court.

7. The relevant presentation is that of blunt injury to the head, to be described below. There is also a small bruise noted on the left cheek. The scalp, forehead, face, neck, trunk and extremities show no evidence of other injury or other pathological changes. The remainder of the external examination is without special note. DESCRIPTION OF INJURIES. HEAD There is a contusion over the occipital region of the head. Examination of the skull reveals a stellate fracture radiating from the occipital area into the left posterior cranial fossa and into the occipital bone to the right parietal bone of the skull. There is contusion with subarachnoid hemorrhage of the cerebellum, tip of the occipital lobe and also contusion of the inferior surface of both frontal lobes of the brain. Minimal subjural hematoma is also noted covering both frontal lobes. INTERNAL EXAMINATION...HEAD The scalp and skull are incised and retracted; the brain is removed. The scalp, skull, meninges and brain show no evidence of trauma or significant pathological changes on transections. Trauma changes are restricted to those previous described.

Dr. Sawait Kanluen testified as follows:

Q. (By Mr. Goldberg, continuing): You keep mentioning two to three story building that would have to be generating the type of

speed if in fact you had that type of speed. If there was a fall either into the bathtub or hitting the wall wouldn't you expect to see some other injuries other than to the skull?

A. Yes, if you had fell from that type of height I would see some other injury. Not only one impact on the head. That is correct, you are right

Q. Did you see any other injuries ?

A. No, I did not.

Q. Did that surprise you?

A. No, I keep saying two or three stories to give a comparison of the speed.

Q. If the child was going at this type of speed that you're describing; the speed that one might fall from a two or three story building or a child might fall and that's the type of speed that was generated, at least in your opinion to create this skull fracture, would you expect to see other injuries?

A. Yes, I do expect to see some other type of injury.

Q. You did not see any in this case ?

A. I did not see any in this case. (T 9/10/86 104-105)

8. The reason the Court is not returning to the parents at this time is because the

deceased child was an abuse ward at a very young age with multiple broken bones in various stages. So, the Court is extremely concerned. It's my ultimate objective to return the children to the parents as quickly as possible with the caveat that those children remain safe." (T 12/15/86 p 4).

9. The parents are to attend counselling and parenting classes. The parents are to give a list of relatives and/or arabic homes for investigation for juvenile placement. DSS and Foster Care homes are to use the children's arabic names. The family is to receive family therapy with Mohammed Ali receiving individual therapy. (Appendix F)

10. So as long as these parents continue to believe that this death was accidental we're going to have a problem about returning these children to those parents. And as long as the therapist that they work with continue to reinforce that, these parents are going to not succeed in achieving return of their children. (T 5/29/87 p. 554-557)

11. THE COURT: .....Now, the point is that one of those two people killed a child. One of them is a killer, the other one is a cover-upper for a killer. Now, this kid, if you read the autopsy, I mean was literally slammed against the wall. This kid did not drown in a bath tub. He didn't just drop dead. You know, something -- somebody -- and these other kids didn't do it. Some adult did something to that kid.
Now, part of the problem here is that we can't get the parents to admit that, that somebody killed this child. One of them killed this child and the other is either covering up for that or can't believe that the other could do it.

****

THE COURT: But at any rate, I am going to deny your motion.
(T 1/12/88, p. 19-31)

12. When the case went to hearing on the permanent custody petition, the issue was not (sic) whether the death of the child established the parents' continuing lack of fitness, but rather whether the efforts made to rehabilitate the family had been sufficiently successful to render the home safe for the children.

13. Q. So at least at that time in February you heard Mohammed Ali tell his father he wanted to come home with him?

A. Yes.

Q. In that same evaluation, at that time was Mrs. Amer holding Mohammed Ali?

A. Certainly during part of it, yes.
(T 10/18/88 878-9)

Q. I take it from your testimony--and is this a correct observation--that the question of whether to terminate parental rights to these children is a very close question. Is that right?

A. Yes. (T 10/18/88 879)

14. Q. (By Mr. Baum, continuing) : Doctor you don't have an opinion to a

reasonable medical certainty that from the point of view of these parents their parental rights should be terminated, do you?

A. I think as I noted, the other option would be to see what happened if they had longer supervised visits to see what would occur.

Q. Would it be appropriate, for example, Doctor, to have them have incremental visits in their home supervised...

A. Ya. (T 12/16/88 at 1622)

15. RECOMMENDATIONS:
I recommend that we work at reuniting the family with intensive therapy. It is very important that we take into consideration the culture, language and religion of the Amer family. I recommend that the children begin to be taught their language and begin to learn about the culture and religion. I also recommend that the needs of the Amer family could be best served in a program such as ACCESS which is geared towards working with Arabic families, Lebanese families, which is sensitive to their needs." (Children's Hospital Report at 9)
.....psychiatric department.(T 12/16/88 Exhibit 14 at 8-9)

16. Mohammed Ali is an Arabic Child placed in a white foster home. He is placed with his sister Suehier.

Projected length of stay is nine months, with the next placement dependent on the outcome of the mother's murder trial. (Updated Service Plan 6/30/86, page 3)

Long Range Goal

A permanency plan will be developed dependent upon the outcome of the second degree murder trial involving the parents, which is currently scheduled to begin on August 7, 1886. (Updated Service Plan 6/30/86 1986 page 6) (a-12)
As of 6/30/86, the Updated Service Plan of the Judson Center stated its Long Range Goal as follows:

A permanency plan will be developed dependent upon the outcome of the second degree murder trial involving the parents, which is currently scheduled to begin on August 7, 1986.

The same Plan specified as an Objective:
A As per the parent agency agreement, the parents will continue to receive counseling from the Arab Community Center on an ongoing basis. (Updated Service Plan,6/30/86 at 6)

17. 5. To attend counseling to acknowledge and accept responsibility for the severe abuse inflicted on Samier Amer, now deceased. (Appendix L).

18. This parent-agency agreement was developed following disposition and findings of fact of the court, in conjunction with the court's orders and expectations and what the Department and Judson Center felt needed to be done in

order to think about returning the children. (T 10/18/88 at 928-929).

19. Q. In other words, if their therapist(Dr. Epstein) were to come to court and say experientially I believe they have acknowledged that, although they have not verbalized that, and they have successfully dealt with the underlying mechanisms that I was just mentioning before, would that satisfy your requirement as a social worker?

A. My requirement as a social worker through Judson Center was based on the court findings and a court order and compliance with the Department of Social Services as well. And I don't know that I can answer your question.
(6/16/88 403)

20. Q. Well, why shoudn't they be returned home with regard to Mrs. Amer ?...
A. I have to combine the whole clinical picture. Okay. Because she experiences loss and separation, that's traumatic for her. She already has a psychological pre-disposition, if you will-- Mr, Derr can testify further-- to anxiety. Okay? That combines. Right now I believe how she experiences Mohammed Ali's behavior is rejection. All right? Over the long run, I think that would be very difficult for her to deal with.(T.647)

21. Because that was exactly what we felt the court order wanted the parents to do, and besides that the Department and Judson Center felt the parents needed to do it....Abuse has been an issue since

the beginning of this case when Samier first came into care; it's never been dealt with. (T. 530)

22. Because abuse is an issue. No matter how many times we have to say this or try and get around it, it's always been abuse, and it will be until it's over with (T.933)

23. Because I still have not seen evidence that any type of abuse or failure to protect has been acknowledged by either one of these parents, and I believe it has been too long. The children deserve a permanent home and some ending to this foster care situation that they're in. (T. 942)

24. Well, Mohammed has indicated-- He indicates that, you know, his feelings for his parents. He loves his father. He indicates that he kind of-- He doesn't know how he feels for his mother. Anytime I try and determine or to see if he expresses some love in terms of his mother, he kinds of refrains from that. The only thing that he has really-- He misses her. He misses her, which is normal for a child being away from his normal parents. But then Mohammed has during sessions also indicated that he's very much afraid of her. (T.1202).

25. The conditions that led to the adjudication (by a preponderance of the evidence) continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child." MCL 712A.19(b)(c)(i); Other conditions exist that cause the child to come within the jurisdiction of the court, the parent has received recommendations to rectify those conditions, the conditions have not been

rectified by the parent..., and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child. (c)(ii);

or

The parent , without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child. (d).

26. The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

27. In Santosky, we described the parent's desire for, and right to, the companionship, care, and custody of his or her children as "an interest far more precious than any property right.

* * * *

Second, . . . [t]he contestants in a termination proceeding are the state and individual. Because the state has superior resources, and because an adverse ruling in a criminal, civil

commitment, or termination proceeding has especially severe consequences for the individual affected, it is appropriate for society to impose upon itself a disproportionate share of the risk of error in such proceedings.

28. ... the probate court did not terminate respondents' rights solely because they failed to comply with the treatment plan. The physical abuse and death of Samier was clear and convincing evidence of neglect sufficient enough to terminate the parents' custody rights in the absence of any proof that this behavior would not occur again." Court of Appeals Opinion, page 5-6.

29. The touchstone of the Fifth Amendment is compulsion, and direct economic sanctions and imprisonment are not the only penalties capable of forcing a self-incrimination which the amendment forbids.
Id at 806.